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Thursday, 17 June 2004

The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 9.30 a.m. and read prayers.

PARLIAMENT HOUSE: ART COLLECTION

The PRESIDENT (9.30 a.m.)—In June 2003 the Speaker and I commissioned Mrs Betty Churcher AO to review a range of matters relating to the Parliament House art collection. Mrs Churcher’s report was completed in October 2003. On 1 December 2003, copies were sent to all senators and members, and comments were invited. Having regard to the comments received, and preliminary advice from the Department of Parliamentary Services on some aspects of Mrs Churcher’s report, the Speaker and I have made certain decisions about the future of the Parliament House art collection.

The Parliament House art collection has five main components. These are the commissioned art works, commissioned art furniture, the historic memorials collection, gifts, and the rotational collection. While Mrs Churcher’s review addressed issues relating to all aspects of the collection, the most important aspects of her review were those relating to the rotational collection. Having regard to Mrs Churcher’s recommendations, and the comments of senators and members, we propose a framework for a rationale and an acquisitions policy for this collection.

The purpose of the rotational collection is to provide Australian artworks of suitable quality for senators’ and members’ suites, and for the public and semipublic areas of Parliament House. The collection has never been intended to function as the basis of a public art gallery, but it has in the past encouraged emerging artists. In view of the comments of some senators and members, I should emphasise that the new approach accepted by the Speaker and me will not mean that the work of new and emerging artists will cease to be acquired. It will, however, mean that new acquisitions will not be restricted solely to emerging artists.

The general criteria for selecting artworks for the rotational collection will be that the artist has appropriate professional standing and that the work is suitable to be added to that collection. The Department of Parliamentary Services will develop detailed criteria for the suitability of artworks for the rotational collection. This work will take account of the original development of the collection, the existing acquisitions guidelines and the specific recommendations made by Mrs Churcher, in particular the focus on better representation of some currently underrepresented areas of Australia. We note, however, that Mrs Churcher’s recommendations do not require any reduction in the acquisition of artworks for the rotational collection. Furthermore, since artworks acquisitions will no doubt continue to be constrained by funding limitations, works by new and emerging artists may well continue to represent a significant proportion of acquisitions. The point should be made that the current acquisition guidelines express a preference for ‘first point of sale’ acquisitions, and this has effectively precluded consideration of the purchase of appropriate works from established artists, alive or dead. That limitation has now been addressed.

Separately from her recommendations about the rotational collection, Mrs Churcher recommended the compilation of an ‘alternative’ collection of reproductions that would be suitable for hanging in senators’ and members’ suites. These reproductions would not be accessioned into the Parliament House art collection. We have accepted Mrs Churcher’s recommendation in principle, because we agree that senators and members should have a broader choice of works avail-
able to them to decorate their suites. An Art Advisory Committee will continue. However, we propose to supplement the membership as proposed by Mrs Churcher so that the Committee consists of the Presiding Officers as joint chairs, the Deputy Speaker, the Deputy President and Chairman of Committees, and the Secretary of the Department of Parliamentary Services. The main role of the Art Advisory Committee will be to consider recommendations for acquisitions made by the art consultant, whose engagement was recommended by Mrs Churcher. Several of Mrs Churcher’s other recommendations will be implemented by the Department of Parliamentary Services, and the Speaker and I will advise senators and members of the details in due course.

There is more work to be done in relation to the Parliament House art collection, especially in relation to the rationale and acquisition policy for the rotational collection and in relation to funding for the extra commissions and the alternative collection recommended by Mrs Churcher. I will keep senators informed of developments in this area.

Senator BROWN (Tasmania)  (9.36 a.m.)—by leave—I move:

That the Senate take note of the statement.

I thank you for the statement, Mr President. It indicates a very clear change in direction for the purchasing of artworks for the parliament, and it does concern me. A key point here is the desire by some members at least to hark back to past times and to have on the walls of our Senate rooms and elsewhere reproductions from the past rather than have original artworks from Australians, particularly from those currently producing and creating their works in Australia. To divert money to the purchase of reproductions to put on the walls of members’ rooms and so on from the fund’s ability to purchase artworks from working artists is retrograde. It is putting our artistic choice for the reproductive form ahead of a wonderful component of this scheme which stimulates the Australian arts community and purchases from the artists who are currently working in Australia. You do not have to have much long-term imagination to know that this scheme is the very best way of picking up original artworks and assisting the arts community.

The concept that this scheme should exist for us to decorate our suites rather than to put on display the creativity of Australian artists is a silliness. It is simply remaking the concept of a great scheme, which was above all at the service of the arts and creativity of Australia. It is not any longer; we are now headed in the direction of the members of the day having reproductions which might decorate their suites—to quote you, Mr President. I think we are well paid, and we are well able to put reproductions that suit our own tastes in our own suites. I do not think we should be decorating our own suites according to our own tastes—out of date as they might be—at the expense of the artistic creation of Australia in the year 2004 or in whatever future year it may be. This is retrograde. It is very narrow-minded and it is very self-invested. Australia deserves better, and the Australian arts community deserves better.

Senator RIDGEWAY (New South Wales)  (9.39 a.m.)—I also want to make a few comments on this motion, given that I have been heavily involved in providing comment on this issue as well as having been critical of some of the recommendations put forward by Mrs Churcher, particularly in respect of the emerging artists program as part of the Parliament House art collection. Whilst it is appreciated that there has been a need to review the way in which the Parliament House art collection is comprised, we also must take into account the intention at the time Parliament House was opened. Philistine views have been expressed by others about
what ought to adorn the corridors of Parliament House or what ought to be more available to the public. It seems to me to not be a question of whether politicians ought to appraise the works of artists; I would be more interested in hearing an appraisal from artists about what they think should be in Parliament House.

The fact that we have a parliamentary building that is different from the Old Parliament House down the road reflects a living, vibrant and dynamic democracy. Most of all, it is about being forward looking. I would suggest that, if people are looking for reproductions or even for commissioned works that may well not be reflective of what is a young, vibrant and living democracy, they need only to go down the road to the Old Parliament House or to the War Memorial to acquaint themselves with what is available. People tend to lose sight of the fact that whilst this building may not necessarily be a public gallery—and I accept that—the emerging and young artists program has been crucial to guaranteeing that we have been able to acquire works of many of our talented artists, who are only now being recognised, at very cheap prices. I recall one piece that is sitting around in the ministerial wing, which was originally purchased for some $1,500 and is now valued at $160,000. To have an appreciation we have to look at more than just whether or not we like what is hanging on the walls.

It also goes without saying that it is incumbent upon us to look not just at a very narrow set of pieces adorning the wall that may well fit the personalities of some people in this place. It is more about recognising that the building has to shape and influence what is acquired as part of the artwork. I am sure that similar comments were made in relation to the tapestry that now adorns the Great Hall and the work that led to that. You would not describe that as an Australian landscape in a traditional or colonial sense, but I think all of us have come to appreciate what it stands for. I would be encouraging the Art Advisory Committee that is to be established to keep in mind that it is a question of looking not just at individual choices but at what we want to represent in our collection—which is shaped by our artists and, more particularly, by the design of the building. The building reflects a modern, living and vibrant democracy. That ought to influence it. We should be not looking backwards but be able to look forwards.

Senator ALLISON (Victoria) (9.43 a.m.)—I join my colleagues Senator Ridge-way and Senator Brown in cautioning against an approach which might take us away from the current art collection. I would urge the Art Advisory Committee to consider this as not just decoration for senators’ and members’ offices. That is not what this art collection is about. It is about emerging artists and it is about identifying those that have potential, and this collection has done that. It has done that in spades. It would be a great pity if suddenly we saw that new works being acquired were botanical drawings and highly predictable watercolour landscapes. That is not what this collection is about. This collection is challenging because it is new art. We should not all expect to understand it or to even like it. That is not the point. The point is that this is art that is selected for this building, which is a very special place. It is not within the realm of most people in this place to make judgments about that art.

You do not have to select the most challenging art—that which you least understand or dislike even. That art does not have to be in your office. There is such a broad collection of art available in this place that there is no reason why we should be saying that because we cannot get the last of the botanical prints on our walls the collection is a load of rubbish—and I have actually heard that said
by people in this place. We do need to trust those people who understand a bit about art and we do need to try and understand that art.

I would urge whoever is to be on the Art Advisory Committee not to bow to the kind of philistine approach to art which I have heard expressed so often in this place, because this is not about our dining rooms or lounge rooms at home. This is not about what you put on your bathroom wall; it is about a very important collection of artwork by new and emerging artists. Some of those artwork choices years on might not have been that productive in their value, because the whole nature of emerging artists is that they will not all emerge to be the most important artists in the world. In fact, to be an artist who is well known in this country is a rare thing. Most artists struggle along for their whole lives producing wonderful work which does not get much recognition and which certainly will not pay them a reasonable wage. We need to have somebody who can identify that art which is good—and there are plenty of criteria for doing that—and I think the selections that have been made for this collection have been fantastic.

I remember on the first day that I came here I was offered a choice from the art collection. I saw the entire collection on slides: ceramics, sculptures, drawings and paintings. I did that because I could not choose as there were so many fantastic pieces that were available to us to have in our rooms. I urge us not to go back to the past, not to yearn for the days of artwork which might be understood by people who do not care to understand art. I urge us to make sure that our collection is not watered down by some notion of reproduction. This would be a very serious backward step. We should continue to buy art from emerging artists. Challenging though it may be for many people, we should try and understand it. If we do not want to understand, that is okay; we do not have to have it in our offices, but please I urge you, Mr President, not to see this as a decoration exercise. This is not about decoration; it is about art.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (9.47 a.m.)—I will just speak briefly on this issue of the Parliament House art collection. I do not pretend, in the comments that I am going to make, to speak on behalf of the opposition. I am not sure that the federal parliamentary Labor Party has taken a firm view on these matters; I am pretty sure that it has not. Nevertheless, I would like to make a couple of observations.

My first concern about this whole issue is the motivation for the establishment of the Betty Churcher inquiry, the review of the Parliament House art collection and art collections policy. What motivated it? It appears that it was motivated by complaints from coalition MPs. They had complained that the current artwork in Parliament House which is by living Australian artists, is—’avant-garde crap’ and the products of sick minds. What did some of these complainants, like Tony Abbott, have to say? Tony Abbott and his key co-complainant, Mr Ross Cameron MP, the member for Parramatta, asked for a few more old—or, if not old, then old-fashioned—oil paintings and, if possible, oil paintings of distinguished white men, around the building. That is what they wanted. They wanted those paintings to adorn the walls of Parliament House. They are entitled to their views.

Obviously Mr Abbott has had some success in this because we now know that former Governors-General adorn the walls of Tony Abbott’s office. I have never been invited there myself, and I know very few people who have, but the one or two who have gone along—such as the members from the
fourth estate upstairs—tell me that that is the situation. That is what prompted this review. It was prompted by complaints by people like Tony Abbott and Ross Cameron. Let us get that on the record first of all.

What has happened? We have a recommendation basically that the collection abandon the previous convention of buying work by living artists and correct the underrepresentation of what is described as the more traditional forms of art. One of the contributions to the review, by of course an anonymous MP, was that we needed ‘more portraits and landscapes—it is time to discard political correctness’. There we are: that is what it is all about. People are entitled to their views on this. I admit that I am not an expert in these matters. I have been—perhaps not even unfairly—accused at times of being a philistine on these matters, but I do worry about the motivation here.

Senator Ian Campbell—Did you enjoy the bird prints in the cabinet suite? That is what I want to know.

Senator Faulkner—The Gould prints have, as you know, appreciated massively in value. I just wish we had a government that could look after the Gould prints and not have them water damaged in leaks out of the cabinet office! Mr President, it seems to me that we have a statement from you which falls between two stools. On the one hand, the Presiding Officers of the parliament do not have the courage—because I think of this as political pressure—to stand by the mandate of collecting emerging artists for the Parliament House art collection at point of first sale. They do not have the courage to stand by that mandate and they do not have the courage to go to a new mandate because of the huge expense that is involved.

We now have what is described as ‘representational’ artwork, which is an attempt to try to satisfy everyone in the building. I am not critical of the Presiding Officers in these circumstances trying to see whether it is possible to assuage all of the concerns that some people have about the art collection. I have described before these sorts of concerns in estimates committee hearings as the concerns of ‘anal retentives’. That is what I think Mr Abbott is when it comes to the Parliament House art collection. It is just not a priority political issue for any of us. Anyway, the Presiding Officers have tried to keep those who think the current collection is a good one satisfied and those who have these incredible concerns, like Mr Abbott and Mr Cameron, satisfied. They try to keep everybody satisfied and, of course, that is not achievable. I think the statement falls between two stools. I question the motivation of the people who are behind these changes. I think this is a huge waste of time and money, and I think the parliament ought to spend its time, frankly, on far more important issues. That is my view of it. Because I think we can be better occupied with our time I will sit down, and let us get on with the real business of the place.

Question agreed to.

PETITIONS

The Clerk—Petitions have been lodged for presentation as follows:

Indigenous Affairs: Government Policy
To the Honourable President and members of the Senate in parliament assembled:
The petition of the undersigned shows;
That the current intention of the Government to abolish the rights of Aboriginal and Torres Strait Islander people to exercise their right of self-determination and self-management, will severely disadvantage Aboriginal and Torres Strait Islander people.
Your petitioners request that the Senate;
1. oppose any legislation for the abolition of ATSIC unless and until an alternative elected representative structure, developed and
approved by Aboriginal and Torres Strait Islander peoples is put in place and which would, at the same time assume the function of ATSIC.

2. oppose any move to appoint an advisory committee as contrary to the rights of Aboriginal and Torres Strait Islander people to elect their own representatives.

3. oppose any move to diminish, dismantle, destroy and/or erode the principles of self-determination and self-management since any such action would turn back the clock on hard won rights of Aboriginal and Torres Strait Islander people.

4. strongly defend these rights of self-determination and self-management of Aboriginal and Torres Strait Islander people previously supported by the Australian Parliament.

5. oppose any move to main-stream services for Aboriginal and Torres Strait Islander people as this too would severely disadvantage Aboriginal and Torres Strait Islander people.

by Senator Allison (from 25 citizens)

by Senator Jacinta Collins (from 76 citizens)

by Senator Nettle (from 26 citizens).

Medicare

To the Honourable the President and Members of the Senate in Parliament assembled:

The Petition of the undersigned are committed to Medicare, one of the world's fairest and most efficient health systems. We are concerned that the current Government's proposed changes to Medicare attempt to divide Australians according to their income and ignore the fundamental philosophy that underpins Medicare—a system where taxpayers pay through their taxes for health care that we can all enjoy at low or no cost at the time of service.

Your Petitioners request that the Senate amend any Medicare bills to preserve the unifying features of Medicare so that there is one system of access to doctors' services.

by Senator Allison (from eight citizens).

Health: Pharmaceutical Benefits Scheme

The petition of certain citizens of Australia

Draws to the attention of the House

That sufferers of Osteoporosis are forced to pay large amounts for the supply of treatment, due to the Criteria, which is enforced by the Government through the Pharmaceutical Benefits Board which states “A vertebral fracture is defined as a 20% or greater reduction in height of the anterior or mid portion of a vertebral body relative to the posterior height of that body, or, a 20% or greater reduction in any of these heights compared to the vertebral body above or below the affected vertebral body”.

Your petitioners therefore ask the Senate to

Please amend this criteria: We request that diagnosis of Osteoporosis be sufficient to have treatment offered on PBS.

by Senator Humphries (from 158 citizens).
Petitions received.

NOTICES

Presentation

Senator Ridgeway to move on the next day of sitting:

That the Lands Acquisition Amendment Regulations 2004 (No. 2), as contained in Statutory Rules 2004 No. 82 and made under the Lands Acquisition Act 1989, be disallowed.

Senator Ridgeway to move on the next day of sitting:

That there be laid on the table by the Minister for Immigration and Multicultural and Indigenous Affairs, no later than 3 pm on 23 June 2004, the following documents relating to the Lands Acquisition Amendment Regulations 2004 (No. 2), as contained in Statutory Rules 2004 No. 82 and made under the Lands Acquisition Act 1989:

(a) any documents relating to the making of the relevant amendments to the Lands Acquisition Regulations 1989;

(b) any advice provided in relation to the decision to make the relevant amendments to the Lands Acquisition Regulations 1989;

(c) any advice provided in relation to the continued government control of title currently held by Indigenous people through the Aboriginal and Torres Strait Islander Commission (ATSIC) after ATSIC is abolished by legislation; and

(d) any other advice relating to the decision to make the relevant amendments.

Senator Hutchins to move on the next day of sitting:

That the time for the presentation of the interim report of the Select Committee on the Free Trade Agreement between Australia and the United States of America be extended to 24 June 2004.

Senator Brown to move on the next day of sitting:

That the Senate—

(a) notes that 310 parliamentarians from 67 countries, including Australia, attended the international Parliamentary Forum on Renewable Energies in Bonn, Germany on 2 June 2004;

(b) notes the resolution adopted by the forum, which called for the shift to renewable energy and energy efficiency to be a key political priority in parliaments around the world and included:

(i) support for the establishment of an International Renewable Energy Agency as an intergovernmental organisation which governments could join at any time,

(ii) encouragement for countries that have not yet ratified the Kyoto Protocol to do so,

(iii) recognition that legislation is needed to develop the full potential of renewable energy, and

(iv) recognition that renewable energy can make a major contribution to overcoming economic disparities in many countries and in the global economy; and

(c) calls on the Australian Government to endorse the resolution of the Parliamentary Forum on Renewable Energies and to implement the measures it recommends.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.55 a.m.)—I move:
That the following government business orders of the day be considered from 12.45 pm till not later than 2 pm today:

No. 6  Tax Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2004
No. 7  Farm Household Support Amendment Bill 2004
No. 8  Export Market Development Grants Amendment Bill 2004
No. 9  Medical Indemnity (Run-off Cover Support Payment) Bill 2004
Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Bill 2004
No. 10 Electoral and Referendum Amendment (Access to Electoral Roll and Other Measures) Bill 2004
No. 12 Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Bill 2004
No. 13 Bankruptcy (Estate Charges) Amendment Bill 2004
Bankruptcy Legislation Amendment Bill 2004

Question agreed to.

**Rearrangement**

*Senator FERRIS (South Australia) (9.55 a.m.)—by leave—At the request of the chairs of three legislation committees, I move:

That the following business of the Senate orders of the day be postponed till a later hour:

(a) no. 2 relating to the presentation of the reports of the Economics Legislation Committee, the Employment, Workplace Relations and Education Legislation Committee and the Finance and Public Administration Legislation Committee on the 2004-05 Budget estimates; and

(b) no. 6 relating to the presentation of the report of the Finance and Public Administration Legislation Committee.

Question agreed to.

**COMMITTEES**

**Economics Legislation Committee**

Meeting

*Senator FERRIS (South Australia) (9.56 a.m.)—by leave—I move:

That the Economics Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Friday, 18 June 2004, from 9 am till 2 pm, to take evidence for the committee’s inquiry into the Superannuation Budget Measures Bill 2004 and two related bills, and the Tax Laws Amendment (2004 Measures No. 3) Bill 2004.

Question agreed to.

**Environment, Communications, Information Technology and the Arts References Committee**

*Senator FERRIS (South Australia) (9.56 a.m.)—by leave—I move:

That the Environment, Communications, Information Technology and the Arts References Committee be authorised to hold a public meeting during the sitting of the Senate on Friday, 18 June 2004, from 9 am, to take evidence for the committee’s inquiry into the Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002.

Question agreed to.

**EDUCATIONAL TEXTBOOK SUBSIDY SCHEME**

*Senator FERRIS (South Australia) (9.57 a.m.)—I seek leave to have the question on general business notice of motion No. 881 relating to the Educational Textbook Subsidy Scheme be put again. It was put yesterday.

*Senator MACKAY (Tasmania) (9.57 a.m.)—by leave—For the edification of senators who are here, this issue relates to a motion moved by Senator Stott Despoja yesterday with respect to the Educational Textbook Subsidy Scheme. I notice that Senator Stott Despoja is in the chamber and she may wish to make comment on it. Inter alia, the motion states that the government should be
urged to extend the Educational Textbook Subsidy Scheme to prevent this further cost burden on students and to hold true to their promise of no GST on education. Consistent with the opposition’s position, we will not support motions that relate to expenditure unless it is quantified. Whilst we have a lot of sympathy with the sentiments expressed in the motion, consistent with our position we opposed the motion yesterday.

Given that we were waiting on Senator Hill’s ministerial statement, and there was a fair bit of angst around the chamber from all sides in order to get that facilitated, there seems to have been some error on the government side on this. I want to make this request before the opposition grant leave for this motion to be reconsidered. During that contretemps—the period in which this error happened—I on behalf of the opposition did query the government’s position. That was before the arrival of Senator Ian Campbell. I was told quite conclusively that the government was supporting this motion. As I recall—and I am happy to be corrected—the government duty whip at that stage was Senator Lightfoot. I asked him whether this motion was being supported and he indicated, yes, it was. This led Senator Stott Despoja to being somewhat surprised and delighted that the government was supporting a motion which would hold the government to its commitment to Senator Stott Despoja—and I must admit I was somewhat surprised as well.

I do understand that the whip and deputy whips cannot be in the chamber 24 hours a day—and we often sit to that extent. On behalf of the opposition, we ask the government this: if you are going to have junior whips in the chamber can they please be junior whips with a modicum of competence? Can they at least be aware of what the government’s policy may be and not put the Senate to this level of inconvenience? The opposition did query it twice, I think. At one stage we had Senator Lightfoot saying, ‘Yes, we are supporting this,’ and Senator Ian Campbell in front of him saying, ‘No, we are not.’ I appreciate that tensions were high—that was when the chamber was somewhat fraught because people were waiting on Senator Hill’s ministerial statement.

Senator Ian Campbell—I think the people on your side—

Senator MACKAY—The media interest and the interest of the people of Australia have vindicated the opposition’s desire and exhortation to get this matter dealt with expeditiously, which is what occurred. The opposition will not be granting leave for this to be reconsidered pending an explanation being provided from the government, preferably by Senator Lightfoot himself, as to why this occurred. This is what we would do on this side of the chamber. I would, if I had made a mistake. We are all human. Senator Lightfoot probably is a bit more human than some of us.

Senator Hutchins—Less human.

Senator MACKAY—More, because he probably makes more mistakes than most of us. But that is fine; we are all human. I would appreciate Senator Lightfoot coming in here and advising us of what happened. I do appreciate that it was a difficult time and tensions were high. If that were me, for example, I would come in and provide the Senate with an explanation. I would say, ‘I am sorry to put you to this level of inconvenience; I did make this mistake.’ If it were Senator Ferris, I am absolutely sure that she would do the same thing, and if it were any of our deputy whips I am sure that that would occur. That is a reasonable request. It is something that would be a matter of courtesy to the Senate.

My final comment is that after this minor fiasco Senator Lightfoot then sat there and
screamed and interjected throughout Senator Faulkner’s contribution in response to Senator Hill’s statement, which I thought was pretty rude given that he had just put the Senate to what would seem now to be a considerable level of inconvenience. Based on that we are asking Senator Lightfoot to come in here and provide an explanation about what happened prior to granting leave.

Senator STOTT DESPOJA (South Australia) (10.03 a.m.)—By leave—I thank Senator Mackay for requesting on behalf of her party and the entire Senate an explanation of what exactly did occur yesterday. There is no doubt that in this place we all make mistakes so I am not about to enter into a debate on the infallibility or fallibility of senators or indeed their level of humanity, as the case may be. I was quite surprised and delighted to receive government support for the extension of the Educational Textbook Subsidy Scheme. For those who are querying quantification, on a yearly basis that is a $25 million expenditure. I am just sad that my delight is to be so short lived but I was expecting that there would be a move to recommit this motion. I am not suggesting that that process should be held up but I do ask for clarification on record.

My understanding of what happened yesterday is—and this is without meaning to reflect in any way on a vote of the Senate—that when that vote was called the two major parties indicated opposition to my motion and it was declared lost. I then indicated my preference to divide on that motion, albeit that I was conscious that we were short for time—and as Senator Mackay has indicated the Senate was fraught yesterday in anticipation of Senator Hill’s statement. Nonetheless, I was keen to record that there were not indicating their votes by virtue of not being here. I thought that was an important right that the Democrats had to call a division. Having said that, I got the impression that the government, in order to save time, changed their vote—or indeed there was a degree of confusion which has already been outlined—and thus voted for the motion. Hence the motion was passed.

As I say, I was momentarily delighted to see the government’s change of position on the textbook subsidy scheme. I do record quite seriously my disappointment that it looks like their decision will be changed today. If there is a fairer or clearer explanation as to what happened and why, I am sure the Senate would like to hear it. For that reason I agree with the request from the opposition for a specific explanation as to what happened. But certainly, I would hate a vote to remain on record that in some way did not reflect the will of the Senate so I totally understand and respect that the government wants to recommit this motion. It is not too late to recommit it and vote for it.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (10.06 a.m.)—by leave—Senator Stott Despoja very succinctly summed up what happened yesterday. When we are dealing with formal motions—I think we have between 10 and 15 of them this morning—there are three options: to oppose motions on the voices; to support motions on the voices; to have a division; or to just let them go through. The government, as advised and as agreed, voted, as Senator Stott Despoja said, on the voices against the motion. The acting deputy whip who was on duty made a wrong call, I am told. I did not hear it but when I was asked to clarify it I made it quite clear that we voted against it. I sought an immediate recommittal of it and we agreed not to have it because Senator Faulkner and the rest of the chamber wanted to get on with another debate, which we did. We have now spent the time it would have
taken to have a full division debating this. I apologise on behalf of the acting deputy whip for any confusion that was caused.

The PRESIDENT—Leave is being sought to recommit general business notice of motion No. 881. Is leave granted?

Leave granted.

The PRESIDENT—The question is that general business notice of motion No. 881, moved yesterday by Senator Stott Despoja, be agreed to.

Question negatived.

NOTICES
Postponement

Items of business were postponed as follows:

General business notice of motion no. 895 standing in the name of Senator Allison for today, relating to nuclear weapons systems and Colonel Stanislav Petrov, postponed till 22 June 2004.

General business notice of motion no. 896 standing in the name of Senator Allison for today, relating to health inequities and their socio-economic determinants, postponed till 21 June 2004.

General business notice of motion no. 898 standing in the name of Senator Allison for today, proposing that certain legislation committees reconvene to further consider the 2004-05 Budget estimates, postponed till 21 June 2004.

BUSINESS
Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (10.08 a.m.)—I ask that government business notice of motion No. 1, which relates to the hours of meeting for today and tomorrow, be taken as a formal motion.

The PRESIDENT—Is there any objection to this motion being taken as formal?

Senator Brown—Yes.

The PRESIDENT—There is an objection.

WOMEN: DOMESTIC VIOLENCE

Senator ALLISON (Victoria) (10.09 a.m.)—by leave—I, and also on behalf of Senator Stott Despoja, move the motion as amended:

That the Senate—

(a) acknowledges that domestic and intimate partner violence comes in many forms and occurs in all sections of the Australian community and across all cultures;

(b) notes that:

(i) the Victorian Health Promotion Foundation report of 16 June 2004 on intimate partner violence revealed that physical and emotional abuse by a partner was the leading risk factor for death, disease and disability and was responsible for 9 per cent of the total health costs for Australian women aged between 15 and 24,

(ii) domestic violence affects between one in three to one in five Australian families,

(iii) the 1996 Australian Women’s Survey found that more than one million women had experienced some form of physical or sexual violence from a current or previous partner,

(iv) more than 80 per cent of violence experienced by women is not reported to police or other services,

(v) men, women and children can be victims of domestic violence as well as perpetrators, however, the vast majority of intimate partner violence is perpetrated by males, and

(vi) domestic violence is not limited to physical and sexual violence but covers a wide range of abusive behaviours such as bullying, verbal, emotional, social, and financial abuse, which are often unrecognised by the community; and
(c) calls on the Federal Government to:

(i) return to the original violence against women campaign, ‘No Respect/No Relationship’ with its focus on young men and the need to develop respectful relationships,

(ii) provide extra funding through the Supported Accommodation Assistance Program agreement, and directly to sexual assault services, to meet the demand that the campaign will generate for domestic violence and sexual assault support services, and

(iii) increase funding to state and territory governments to allow for the implementation of the National Safe Schools Framework with a strong focus on tackling bullying behaviour.

Question agreed to.

RENEWABLE ENERGY AMENDMENT (INCREASED MRET) BILL 2004

First Reading

Senator LEES (South Australia) (10.09 a.m.)—I move:

That the following bill be introduced: A Bill for an Act to set a higher target for mandatory renewable energy requirements, and for related purposes.

Question agreed to.

Senator LEES (South Australia) (10.10 a.m.)—I move:

That the bill may proceed without formalities and be now read a first time.

Question agreed to.

Bill read a first time.

Second Reading

Senator LEES (South Australia) (10.10 a.m.)—I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in Hansard.

Leave granted.

The speech read as follows—

This Bill has a simple design. It increases the Mandatory Renewable Energy Target from the current target of 2% to a real 3.5% as part of the shift to reduce greenhouse gas emissions by the energy sector.

The effect of the legislation is to place a legal liability on wholesaler purchasers of electricity to proportionally contribute towards the MRET target of 17,300 gigawatt hours (GWh) of renewable electricity per annum by 2010.

The bill’s intent is to facilitate the development of the capacity of the renewable energy industry by ensuring that this technology is used. It strengthens the commitment to renewable energy generation and industry development. It will ensure thousands more jobs are created in the renewables sector.

The funding, encouraging, supporting and facilitating research into renewable energy or pilot projects for renewable energy are all well and good. However, the only way to encourage general use of clean fuels is to support that directly.

This is why we must increase the target for the volume of electricity to be generated from clean sources such as solar, wind, hydro or co-generation.

The infant solar, co-generation and wind industries can not just jump directly into full competition with the long established power generators who use black or brown coal. We must temporarily intervene to help these fledging industries to ensure they can establish themselves in the market place.

It is estimated that it will be 2015 before wind is competitive with coal, and 2020 for solar. It is estimated that there will be a cost increase to electricity users of less than $3 for a typical family’s quarterly electricity bill.

Since MRET was implemented, over 90 per cent of the $1 billion in new generation is in regional Australia.

It is estimated that an increase in the market share of renewable energy from increasing the MRET target to a real 3.5% would deliver:

• around $5 billion in investment in new renewable power generation
around 90% of this new investment would be invested in regional and rural Australia
• around 5000 new jobs
• continued expansion and support for the export of renewable technologies and services
• has delivered around 6,000 jobs Australia wide.

Australia is well placed to develop a renewable energy industry as it has natural advantage in solar energy. The costs of renewable power are decreasing and it represents a low risk way to reduce Greenhouse emissions.

Senator LEES—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

WORLD REFUGEE DAY

Senator NETTLE (New South Wales) (10.10 a.m.)—I move:

That the Senate—

(a) notes that:

(i) 20 June 2004 is World Refugee Day, and

(ii) Australia has failed many asylum seekers who are hoping to rebuild their lives in safety and dignity;

(b) condemns the Federal Government’s treatment of asylum seekers, including:

(i) the indefinite detention of asylum seekers in harsh conditions, including the denial of basic human rights,

(ii) the official discrimination and denial of services and rights to those asylum seekers found to be refugees but granted only temporary protection visas,

(iii) the Pacific Solution, which has left many asylum seekers abandoned on Nauru and Manus Island, and

(iv) the forced deportation of asylum seekers to the countries they have fled or to inappropriate third countries; and

(c) calls on the Government to end mandatory, non-reviewable detention of asylum seekers in Australia and adequately fund genuine community release programs.

Question put:

The Senate divided.  [10.15 a.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes………

Noes………

Majority……

AYES

Barnett, G.  Bishop, T.M.
Buckland, G.  Calvert, P.H.
Campbell, G.  Campbell, I.G.
Chapman, H.G.P.  Colbeck, R.
Collins, J.M.A.  Crossin, P.M.
Eggleston, A.  *  Faulkner, J.P.
Ferguson, A.B.  Ferris, J.M.
Fifield, M.P.  Forsyth, M.G.
Harris, L.  Heffernan, W.
Hogg, J.J.  Humphries, G.
Hutchins, S.P.  Johnston, D.
Kirk, L.  Knowles, S.C.
Ludwig, J.W.  Lundy, K.A.
Macdonald, J.A.L.  Mackay, S.M.
Marshall, G.  McGauran, J.J.J.
McLucas, J.E.  Moore, C.
Payne, M.A.  Ray, R.F.
Santoro, S.  Scullion, N.G.
Stephens, U.  Tchen, T.
Troughton, J.M.  Watson, J.O.W.
Webber, R.  Wong, P.

* denotes teller

Question negatived.

WORLD REFUGEE DAY

Senator KIRK (South Australia) (10.18 a.m.)—by leave—I move the motion as amended:

That the Senate—

(a) notes that:
(i) 20 June 2004 is World Refugee Day,
(ii) there are more than 20 million refugees and displaced people in the world, and
(iii) acknowledges Australia’s long and proud record of resettling refugees in Australia as a signatory to the Refugee Convention;

(b) commends the United Nations High Commissioner for Refugees (UNHCR) for the tireless work it undertakes worldwide;

(c) congratulates the UNHCR Australia post for its ongoing work in assisting asylum seekers who were or remain a part of the Howard Government’s ‘Pacific Solution’;

(d) condemns the Howard Government’s outsourcing offshore to foreign countries and an international company of Australia’s immigration detention system through the ‘Pacific Solution’;

(e) notes the report of the Human Rights and Equal Opportunity Commission’s inquiry into children in detention;

(f) calls on the Government to:

(i) acknowledge that it has presided over an immigration detention regime where the welfare, safety and health of children has not been its primary concern,

(ii) set the immigration detention system up for the future so that this cannot happen again, and

(iii) release children from immigration detention facilities immediately, which is within the power of the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone);

(g) condemns the Minister for the production of the selective and ill-informed ‘Australia says YES to Refugees’ school kit; and

(h) commends the UNHCR for its activities to commemorate World Refugee Day 2004 and encourages Australian high school students to participate in the UNHCR’s World Refugee Day writing competition.

Question agreed to.

HUMAN RIGHTS: BURMA

Senator RIDGEWAY (New South Wales) (10.19 a.m.)—by leave—I, and also on behalf of Senator Stott Despoja and Senator Faulkner, move the motion as amended:

That the Senate—

(a) notes that:

(i) 19 June is the birthday of Aung San Suu Kyi, leader of the Burmese National League for Democracy (NLD),

(ii) 2004 marks the eighth birthday since 1989 that Aung San Suu Kyi has been in detention under the Burmese military government (SPDC), and

(iii) 19 June is Women of Burma Day, and events are being held around Australia on 20 June to commemorate this day;

(b) urges the SPDC to:

(i) release Aung San Suu Kyi and her deputy Tin Oo, who remain under house arrest, and

(ii) re-open all offices of the NLD and allow all offices full access to communication with people both inside and outside of Burma; and

(c) calls on the Australian Government to reconsider the policy of full diplomatic relations with the Burmese military government until the release of Aung San Suu Kyi is ensured.

Question agreed to.

COMMITTEES

Foreign Affairs, Defence and Trade
References Committee

Extension of Time

Senator EGGLESTON (Western Australia) (10.20 a.m.)—At the request of the Chair of the Foreign Affairs, Defence and Trade References Committee, Senator Hutchins, I move:

That the time for the presentation of the report of the Foreign Affairs, Defence and Trade References Committee on current health
preparation arrangements for the deployment of Australian Defence Forces overseas be extended to 5 August 2004.

Question agreed to.

**National Capital and External Territories Committee**

*Meeting*

**Senator EGGLESTON** (Western Australia) (10.20 a.m.)—At the request of the Chair of the Joint Standing Committee on the National Capital and External Territories, Senator Lightfoot, I move:

That the Joint Standing Committee on the National Capital and External Territories be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 23 June 2004, from 5 pm to 8 pm, to take evidence for the committee’s inquiry into the adequacy of funding for Australia’s Antarctic Program.

Question agreed to.

**Rural and Regional Affairs and Transport Legislation Committee**

*Meeting*

**Senator EGGLESTON** (Western Australia) (10.20 a.m.)—At the request of the Chair of the Rural and Regional Affairs and Transport Legislation Committee, Senator Heffernan, I move:

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 17 June 2004, from 4.30 pm to 8.30 pm, to take evidence for the committee’s inquiry into the provisions of the Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004.

Question agreed to.

**Community Affairs Legislation Committee**

*Meeting*

**Senator EGGLESTON** (Western Australia) (10.20 a.m.)—At the request of the Chair of the Community Affairs Legislation Committee, Senator Knowles, I move:

That the Community Affairs Legislation Committee be authorised to hold public meetings during the sitting of the Senate, from 9.30 am, on the following days:

(a) Friday, 18 June 2004, to take evidence for the committee’s inquiry into the Family and Community Services and Veterans’ Affairs Legislation Amendment (Income Streams) Bill 2004; and

(b) Friday, 25 June 2004, to take evidence for the committee’s inquiry into the provisions of the Commonwealth Electoral Amendment (Preventing Smoking Related Deaths) Bill 2004 and related bills.

Question agreed to.

**Community Affairs References Committee**

*Report*

**Senator McLUCAS** (Queensland) (10.20 a.m.)—I present the report of the Community Affairs References Committee on Hepatitis C and the blood supply in Australia, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

**Senator McLUCAS**—I move:

That the Senate take note of the report.

I am pleased to present the report of the Senate Community Affairs References Committee inquiry into hepatitis C and the blood supply in Australia. Before we began this inquiry, my understanding of the nature and the extent of this issue was limited and I think this lack of understanding is shared by most Australians. I am fortunate that I have been able to learn about the nature of the issues facing people who have contracted hepatitis C through the blood supply. I hope that through this inquiry and report there will be a greater and broader understanding of hepatitis C in this nation. I felt the lack of understanding of hepatitis C infection that I had was telling. This lack of understanding is
itself part of the problem. The fact that we do not know the number of people who have hepatitis C or how they contracted it is a problem that needs to be overcome.

During the inquiry, we heard from the Australian Red Cross Blood Supply and CSL, from doctors and researchers working in the hepatitis C field, from the hepatitis councils and from a range of groups who represent those who have contracted hepatitis specifically through infected blood. We also heard from the Department of Health and Ageing and very importantly from individuals who shared their stories both confidentially and publicly and who live day after day with the reality that they have contracted hepatitis C through a simple ordinary medical procedure. I think that fact must not be overlooked. People went to hospital to have a baby or to undergo a normal procedure and had to have blood. As a result of that medical event, they now have a disease that is life changing for them.

We know that between 3,500 and 8,000 Australians who live with hepatitis C received that infection through the blood supply, including about 1,350 people who are haemophiliacs. The tragedy, though, is that many people who have hepatitis C do not know it. A recommendation in our report will hopefully assist with that identification. The first recommendation of our inquiry asks the Health Ministers Advisory Council to consider the introduction of a mandatory reporting mechanism. It is mandatory to report hepatitis C infections but that reporting occurs only between the doctor and the state. Our committee recommends that a further mandatory reporting mechanism be instituted to ensure that a database is collected nationally of people who, it is thought, contracted hepatitis C through the blood supply.

Hepatitis C affects all aspects of the infected person’s life. As I said, it is a life changing disease. There are many debilitating symptoms such as fatigue, pain and commonly depression. Some people develop cirrhosis of the liver, liver failure and even liver cancer. Many people with hepatitis C cannot continue to work. For some it has affected their relationships with their family and their friends. We heard many sad and tragic stories, which were common stories, unfortunately, of broken marriages where the pressure of the disease affected the relationship to such an extent that it was not possible to continue.

People with hepatitis C also face ignorance, discrimination and stigma. This is very distressing, particularly when it occurs in health care settings. We heard many tragic stories about people who presented to the medical profession but the lack of understanding of the nature of hepatitis C by the medical profession meant that those people were dealt with very poorly. As a result of this discrimination, many people with hepatitis C often choose not to inform their family or their friends about their health status for fear of rejection or ostracism.

The committee heard from a number of respondents who felt that Australia’s decision not to introduce surrogate testing—which was the only form of testing available prior to the introduction of more accurate antibody testing in 1990—for hepatitis C was wrong. The committee was also very aware of the widespread controversy surrounding the use of surrogating testing for hepatitis C in Australia. There is evidence that the relevant authorities in Australia could have begun surrogate testing for hepatitis C and that this might have had a small benefit. However, the committee was also presented with a great deal of compelling evidence as to why surrogate testing was not introduced. It seems to the committee that it was open to the relevant bodies, based on the information available at the time, to take the decisions that
they did. The committee is confident that due consideration was given to pertinent evidence at relevant times and that decisions were reasonable in the circumstances.

The committee were also asked to consider the implications for Australia of the world’s biggest inquiry into blood—the Canadian commission of inquiry chaired but Justice Horace Krever. We considered that report and, although the Krever report provides a useful analysis of the state of knowledge at the time, the committee believes there was a different context between Canada and Australia in which those decisions were being made. The key difference is that in Australia all blood is given on a voluntary basis whereas in Canada and in the United States people are paid for their donations of blood. That is the significant difference.

The committee were also asked to examine Australia’s involvement in compensation schemes for people who contracted hepatitis C through the blood supply. Compensation schemes exist in the states and territories for those who are infected with hepatitis C through blood. Witnesses pointed to the restrictive nature of these schemes and to confidentiality requirements. There were calls to increase and extend the compensation schemes. While we acknowledge these calls, stronger and louder calls were heard by the committee for greater access to health services, including psychology and psychiatry, improvement of education of medical personnel and support for research efforts to develop more effective treatments for hepatitis C.

We have a range of recommendations in our report, which are in the overview at the beginning of the document. I think the most important recommendation and one that will change health outcomes for people who have hepatitis C is recommendation 6. The committee recommends that we set up a national post-transfusion hepatitis C committee with the purpose of, firstly, formulating, coordinating and delivering an apology to those who have acquired hepatitis C through the blood supply. I acknowledge that the ARCBS very recently met with some of those who contracted hepatitis C—and people would have seen in the media—to start that process. That is good. I encourage other participants in this discussion to be part of that process, including governments and potentially including CSL.

This committee will also work with the states, the territories, the Commonwealth and the Red Cross to establish an effective look back program. I am sure other speakers will talk more about that. Most importantly, we recommend that a fund be established—funded by the states, the Commonwealth and potentially the Australian Red Cross Blood Service—that can be accessed by people who have contracted hepatitis C through the blood supply. We say: ‘If you think you got hepatitis C through the blood supply and you know you had a transfusion, let us help you. Let’s not go down the legal path; let us simply get you some support.’ There are varying levels of support across the country, and there are many people who are not getting the level of support that they need. I commend the report to the Senate. I put on record my thanks to the committee and to Elton Humphery, Christine McDonald and Tim Watling for their service to the committee. I particularly thank those individuals who have contracted hepatitis C through the blood supply and shared their stories with us.

Senator KNOWLES (Western Australia) (10.31 a.m.)—Today the Senate Community Affairs References Committee’s report *Hepatitis C and the blood supply in Australia* has been tabled. I have been on many committees in my 20 years in this place, but this would have to rate among the three saddest committees I have ever been on. The issue
has touched the lives of Australians in ways in which many of us would never understand. I certainly did not understand the severe implications of contracting hepatitis C until we got down to the nuts and bolts of this inquiry. The sad, horrible, graphic stories that people told us cannot but touch hearts as we try to help our fellow Australians overcome something they contracted through no fault of their own—there was no form of stupidity involved or any rashness in their behaviour; they contracted a virus through a blood transfusion.

It is enormously sad that people who have been involved in traffic accidents or have undergone major surgery require blood transfusions, because those people—the doctors and everyone else—act in good faith, but haemophiliacs require blood products just to live. They too have been affected and infected by this virus, which is part of the reason why the committee has recommended that governments look at the availability of the recombinant factor, in conjunction with the plasma derived products, to ensure total safety. Plasma derived products have been proven to be absolutely safe since the early 1990s—I am not trying to create fear; I am just saying that a number of people want an option.

Another tragedy is that a lot of people in the community do not even know that they have contracted hepatitis C. They know they are ill and they have sought help, but they have not been identified as sufferers. That is where the system has fallen down in many areas, insofar as many in the medical profession seem unable to provide an immediate diagnosis for sufferers. People have been sent away, having been told that they have a virus or chronic fatigue syndrome or that they are run down, whereas if they had tests that confirmed the problem they would be able to access treatment.

People are affected in a multitude of ways. Some of them cannot manage day-to-day things such as getting out of bed or caring for their children. They have difficulty getting to appointments. Probably worst of all is that in many cases they suffer discrimination. The lack of public awareness of hepatitis C means sufferers can face enormous discrimination, because people tend to think they have contracted hepatitis C through unsafe practices, body piercing or tattooing. The tragedy of it is that a lot of those practices are still being engaged in by young people—they do not know the risk that they are exposing themselves to today.

Another recommendation of the committee is for a better public education and awareness system whereby people who are sick can be alerted to the fact that, if they had a blood transfusion some years ago or if they had undertaken some unsafe practices some time ago, they might have hepatitis C. We should help them identify and manage their problem and alert people to the practices that can put them at risk in the future. The federal government has provided millions of dollars to the states and territories for an education campaign. To the best of my knowledge, the states and territories have put that money into identification and management programs, which I believe should be undertaken by the colleges of general practice. Be that as it may, that money has been put into that area. It is, therefore, a recommendation of the committee that we look at a better public education and awareness campaign that would use the broad media, television, radio, newspapers, and possibly even mail to every household. This situation is so serious that we cannot just hope that it will disappear and that people might be more aware. We need to undertake an education campaign to make people more aware.

I think that looking for people to blame is a very natural response for these innocent
people, but the overwhelming evidence was that, as Senator McLucas has said, people wanted help. They wanted help to manage. They said, ‘Just getting a huge dollop of money is not going to help me look after my kids. It’s not going to help me access medica-

tion. It’s not going to help me get to appointments.’ They want this help, and that is why we have recommended that consideration be given to more help being available to the people who are affected.

It has to be said that the ARCBS acted on the best available advice at the time not to introduce surrogate testing, and they have recently provided an apology. I think the important thing here is that the surrogate testing has proved worldwide to give false positives and false negatives at unacceptably high levels. Queensland was the state that did introduce surrogate testing, and the committee found that it had about a 70 per cent rate of false negatives. As I said at the time in a hearing, I would have been pretty angry if in fact I had decided to go to Queensland for treatment or knowing that I might need a transfusion to subsequently find that they had 70 per cent false negatives. Seventy per cent of the people who were given the surro-
gate testing in fact had the virus, but it was not identified by the testing. I think that it has to be stated clearly that the ARCBS did act on the best advice appropriate to Australia at the time. Senator McLucas has already given an explanation of what ‘appropriate to Australia’ means.

Regarding those who are seeking compen-
sation, the overwhelming majority want help with their management. The compensation systems that are available through the states and territories have in some cases not been made known to some of the sufferers, and I think they should be. The states and territo-
ries should be more up front in saying that this compensation is available and allowing people to access it. When we look at the lack of understanding in the community, the discrimi-

nation by the community and sections of the medical community and allied professionals is something that we have to over-
come. It is sad to see that people who have contracted it this way, through blood products, are firstly viewed as having contracted it through some other means. It all adds weight to the way in which we must educate the public to a far greater degree.

There is much more we could say, and I know my colleagues to follow will say more. In the limited time I have got, I want to put on the record my thanks to Senator McLucas for her excellent chairing of this inquiry under very difficult circumstances with very sad stories, to my colleagues on the inquiry and, of course, to the outstanding community affairs secretariat, whose praises I can never sing enough. To Elton Humphery and his team, thank you very much for all your assis-
tance.

Senator HUTCHINS (New South Wales) (10.41 a.m.)—Last year I moved in the Sen-
ate that the terms of this inquiry be sent to the Senate Community Affairs References Committee. That was the result of an approach that was made to me by my very good friend and the former member for Dobe-
ll, Michael Lee. Michael asked me to speak to two men who had a particular prob-
lem with hepatitis. Like Senator McLucas, I was not all that aware of hepatitis. I did not realise there were five types of hepatitis, as I do now. I am sure my colleagues now know, as I do, a lot more about this disease, but I was not as sure about hepatitis C.

Michael asked me to see two men: Rever-
ed Bill Crews, head of the Exodus Founda-
tion, and a chap called Charles MacKenzie, head of the Tainted Blood Action Group. They put to me the tales that both Senator McLucas and Senator Knowles have detailed here today, tales of men and women—in par-
ticular women who have been through childbirth—who have had blood transfusions and who, as a result of those blood transfusions, have been infected with hepatitis C. I also heard of men and women who had had car accidents in the 1980s, had had blood transfusions and had been infected with hepatitis C. I also heard of people who had had elective surgery in that period, had also required blood transfusions and had been infected with hepatitis C. As a result of those approaches to me and the consent of my colleagues, both Labor and non-Labor, we put together the terms of reference for this inquiry.

You will see in the back of the report that I have made an additional statement. I did toy with the idea of making a minority report and, towards the end of my speech, I will come to why I did not. My concern about the development of this disease is in some ways in contrast to the emphasis that my colleagues have used in this report. I do not believe that the medical authorities who sat down in the 1980s acted out of any malice or greed, but I reckon that in the 1980s the men and women in the medical authorities in this country made the wrong decision. There was a test available for men and women who needed blood transfusions—a test that was inaccurate, as Senator Knowles has said, but available.

In 1981, the Americans identified a strain of hepatitis that they called non-A, non-B. In January 1981, they sat down and discussed how they might deal with this. Later in the year, once again they discussed how they should deal with this. In a hotchpotch fashion throughout the United States, a system called ALT testing was introduced. It was not totally accurate, but it was accurate enough—as Senator Knowles herself acknowledged in relation to what happened in Queensland—that maybe three out of 10 units that were tested were positive for hepatitis C and would not have been transfused into men and women who needed that blood transfusion. That is a fact. Throughout the 1980s, the blood authorities in this country—the state and federal authorities—grappled with that idea. They continually rejected the idea of ALT testing.

I understand the compassion my colleagues have expressed here this morning in relation to the decisions that were made. However, that is no comfort to the men and women who got this disease following childbirth, car accidents or elective surgery. Both Senator McLucas and Senator Knowles have spoken eloquently about the damaging effects this disease has had on men and women, particularly women. Their relationships are finished. From the 1980s, men and women have gone for many years wondering why they were lethargic, why they could not contribute to normal daily life and why they could not contribute to their jobs. These people lost their relationships—their husbands or their wives—and they lost their jobs.

This has all come about as a result of the infection that came into the blood system in the 1980s. As I said, at a meeting in Washington on 9 January the US authorities identified that this was a problem. On and off, as I said, from that period onwards there was a hotchpotch approach by them to the introduction of this testing. We need to move on from there. This has occurred; we need to deal with what is happening now.

I believe that the trust that men and women in this country put in the authorities proved to be fallible. As a member of parliament, I cannot for one moment look at those people and say that there was not a time when we could have acted differently and we did not. There was a time when we could have acted differently, and we did not. I do not blame the Red Cross in particular for this. In the end, the federal and state authori-
ties were responsible for our blood supply. They sat down and made these decisions.

As late as 1987, once again the blood banks in this country met and said that they would not introduce this system. But by 1988, on the advice of Dr Catherine Hyland, the Queensland authorities did. Senator Knowles has mentioned the ‘success’ where they identified three out of 10 or the ‘non-success’ where they identified seven units out of 10 that were false—whichever you call it. It does not matter now. What matters now is the fact that we have done this inquiry and we have raised the level of public knowledge of what has occurred in this very despicable part of our medical history. I am not necessarily satisfied that the recommendations go as far as they should, but, thanks to my colleagues, I have had a significant input into revising some of them.

I want to talk about aspects of the compensation that has occurred in other parts of the world and what is happening now in Australia. In Ireland, there are lump sum payments at all stages of the disease; there is free medical care available; and tribunal decisions are based on the loss of earnings, health care costs and quality of life. In Canada, there are lump sum payments based on loss of income; there is free medical care for items not covered by public and private schemes; and there are incidental payments, monthly payments and compensation for dependants. In the United Kingdom, there are lump sum payments of £20,000, with another £25,000 for liver disease. In particular, there are special payments for those who have lost their medical files.

The recommendations in this report make reference to the look back program. It has proven to be inadequate and ineffective, but it is a good idea and it should be beefed up. As a result of our inquiry, we have found that the blood authorities and medical authorities in the various states have not had effective programs that allow us to identify where that blood came from and to whom it was transfused. In our inquiries, people made statements and submissions saying that they inadvertently and accidentally donated blood that was infected.

In the minute left to me, I want to say why I determined not to put in a minority report. Already in this country the state and federal authorities are contributing to compensation schemes for people who have suffered hepatitis C and continue to suffer it. Already the Commonwealth has contributed $7 million. The period between 1986 and 1990 seems to be the window for which these settlements are being made. Unfortunately, they are confidential. I did not put in a minority report because I think it is significant that the two government senators were prepared to sign up to a scheme that allowed for a fund to be set up to assist the men and women who suffer from this terrible disease. That is a significant step and I applaud them for it. One government senator has a long history of involvement in the social security and health area; one is a former Chief Minister for the ACT, where this scheme is already operating.
During this inquiry it became evident that hepatitis C and its effect on victims have not been fully understood. That is complicated by a number of factors. As members of the committee have mentioned, diagnosis of this disease is not always immediate; some people go for years before being diagnosed. In fact, many people incur the disease through blood transfusions in traumatic circumstances: in childbirth, as a result of a car accident and so on. Many sufferers are lumped together in the minds of other people with those who incur diseases such as hepatitis C through unsafe behaviours, such as intravenous drug use. Coupled with all of that, there is a general lack of public understanding of what hepatitis C is, how it affects you and how it can be contracted and passed on.

In all those circumstances, it was clear that more needed to be done. I am very pleased that, as Senator Hutchins indicated, the committee has taken the step of recommending a number of changes to the way in which authorities deal with the victims of hepatitis C infection and improve the services available to them and to their families.

A pivotal question the committee faced, however, was whether it was appropriate to attach blame to the agency or agencies primarily responsible for the transmission of hepatitis C infected blood. The Australian Red Cross Blood Service, of course, was a key witness before the inquiry, and its evidence was examined very carefully indeed. There is a propensity in our society to believe that we need to attach blame and that we need to find a person or party at fault when things go badly wrong. In the case of those infected with hepatitis C, things certainly did go badly wrong. The questions for us, however, were whether or not blame should be attached to the Red Cross Blood Service or to another party or parties in this process, such as the Commonwealth Serum Laboratories, and to what extent we would judge their behaviour—in light of the challenge that was facing those organisations in the late 1980s—as having been reprehensible in some way.

At the end of the day, it is true that the committee felt that there was a great preponderance of evidence pointing in a number of directions at the one time, making it unsafe to conclude that, in particular, the Red Cross had behaved reprehensibly in choosing not to implement a system of surrogate testing in most places in Australia. Surrogate testing, as members have pointed out, was employed in some places in Australia and in some other places in the world, particularly in the United States. It is also true that it was not employed in many places around the world and in most states of Australia. The uncertainty of the effectiveness of that testing was the critical issue that we came to grips with.

There was an ambiguity of evidence—an inconsistency in the clarity of the evidence—about whether surrogate testing would or would not have effectively provided a tool to eliminate an inappropriately high level of risk of infection from hepatitis C. The nature of the challenge which the Red Cross and others faced was best summarised by Professor McCaughan, who at length discussed the question of what evidence was available and how it should have been assessed by parties at the end of the 1980s. He cited the concept of equipoise whereby:

If on the balance of the evidence you do not know what to do, then either choice is ethically acceptable.
Clearly, the suppliers of blood and blood products in Australia at that time for the most part, with some exceptions, made the decision to continue to supply blood in those circumstances. The fact that they did so led to many people being infected. The part in the process that bodies such as the Red Cross played led to an apology to the people who were infected. I am very pleased that the Australian Red Cross has seen fit to take that step.

I think it is a mistake, however, to assume from that that there has been serious culpability on the part of players such as the Australian Red Cross in the way in which blood products were supplied. They were facing a difficult choice—a choice which, had any of us been facing it, we would have encountered exactly the same level of difficulty in resolving. I believe the many challenges which a body such as the Red Cross face in these circumstances need to be borne in mind when passing judgment many years later on their conduct, particularly where it has led to such devastating consequences.

A factor taken into account at the time—and rightly so, in my opinion—was that a testing regime, such as surrogate testing, would have led to a very high number of false negatives, as Senator Knowles has suggested. That would have had a serious downside for other people—people other than those who might have become infected ultimately by such diseases as hepatitis C—in the loss of many valuable and suitable donations to Red Cross services around Australia.

Evidence brought before the committee was that, even in Queensland, there were significant problems with loss of donors and finding replacement donors for those who were being rejected—for the most part, falsely—because the testing suggested that they were not suitable donors when in most cases, in fact, they would have been. If that problem had been replicated across the whole of Australia, over potentially a longer period than the window during which surrogate testing was the only means of identifying suspect blood, our health services and our blood transfusion services would have faced a real and a very significant crisis.

I believe, with the enormously beneficial capacity of hindsight, that it was appropriate to protect the whole of the blood supply and the capacity of people generally to access blood products when they needed them, particularly in traumatic or critical circumstances. I believe that the decision made by Red Cross in states other than Queensland was appropriate. That does not mean to say that it was inappropriate in Queensland. I believe that is not a conclusion you can draw from that statement. As Professor McCaughaun put to the committee, given the ambiguity of evidence and the lack of any clear indication one way or the other, either choice was ethically acceptable. I also wish to thank the other members of the committee and the staff of the committee for the help they provided to us in this very difficult but extremely important inquiry.

Senator LEES (South Australia) (11.01 a.m.)—I would like to begin by thanking the secretariat of the Community Affairs References Committee. I particularly thank the other members of the committee. I believe all of us, government and non-government senators, set out with the aim of getting a result. We put aside any party affiliations and worked to see whether we could get some real support and assistance for those people who are now facing life with a devastating disease that affects not only them and their relationships but also their families. So I put on the record my thanks to everyone who was involved in the committee.

I also thank those people who were prepared to come before us and share a very personal part of their lives. Many people,
obviously, have been affected in absolutely every way possible, from their opportunities to have a family, because of the risks of passing on the disease to children, to their employment. All sorts of opportunities have passed them by. They are not able to take part in sport or any activity that requires stamina and endurance. So I thank those people who put all of that aside and were prepared to relive their experiences for the committee to help us understand what it is like to be hepatitis C positive.

I would also like to thank the Red Cross. Obviously the committee does not want to do anything—indeed we did not do anything—that would in any way put at risk the future blood supply by discouraging people from donating. As a donor, I know all the extra procedures that the Red Cross has put in place over the last year or so. We all have our own cards now that have to be scanned as we donate. I acknowledge the frank and open evidence of the Red Cross before the committee and the way they have worked to make sure that these types of devastating mistakes do not occur in the future.

I was aware of hepatitis C and how virulent it was, but I was not aware of how many people had been infected by tainted blood throughout the 1980s and 1990s. I was certainly not aware of the effect this was having on so many in our community. All of us on the committee—and here I particularly commend Senator Hutchins for his passion on this issue and for bringing it to our attention—wanted a result. We wanted to work for what would actually make a difference to the lives of the people who are out there having to deal with hepatitis C on a daily basis. Hopefully, the government will now respond positively to our recommendations. Perhaps recommendation 6, dealing with the way the committee is set up, is the most important. We must do the Lookback program properly and then make sure that the necessary service delivery, the support, the day-to-day counselling, the medical help, the welfare services et cetera are provided for people battling hepatitis C. Some of it is covered under Medicare, but an awful lot of things are not covered: transport, alternative medications, non-prescription items and a whole raft of issues for families, such as counselling and support.

Hopefully, the government will rapidly accept the final recommendations and, before we go into the usual hiatus at election time, respond to the committee report, which is unanimous. That is unusual for references committees, unfortunately. The government should now move on and do two things: firstly, respond to the specific recommendations and help those people who are battling hepatitis C and, secondly, with the states look at better prevention measures across the board. Whatever way hepatitis C is transmitted, we need to stop it. We need to reduce, if not eliminate, the passing on of hepatitis C. From improving the Lookback program and supporting the Red Cross as it further secures Australia’s blood supply, so nothing like this can be passed on in the future, to needle exchanges and education campaigns—it all has to be put in place so that no Australian in the future contracts this terrible disease. I close by again saying thanks to all those people who are hepatitis C positive who came before the committee and shared their experiences with us.

Senator MOORE (Queensland) (11.06 a.m.)—I add my voice to those of the other senators who shared in the experience of the hepatitis C inquiry by the Community Affairs References Committee. None of us who participated in this inquiry in any way remained unaffected by this experience. We learnt a lot about hepatitis C. Many of us did not have that knowledge before we started this activity. We learnt a lot about hepatitis C. Many of us did not have that knowledge before we started this activity. We learnt a lot about the history and various causes of the condition. Amazingly detailed medical evidence was presented to
the inquiry as to how this condition could be acquired and how, throughout the 1970s and 1980s, across the world people were struggling to identify this particular strain of the very serious disease of hepatitis. We learnt a lot about the medical causes. We learnt a lot about the science. But, for many of us, I think the real experience of this inquiry was to learn about the effects of hepatitis C.

No-one could remain untouched by the stories of the people who came before our inquiry who had acquired this disease through a range of different ways. All of the other senators on the committee have mentioned the different experiences of the people who came before us. We also heard from their families, from their carers and from their friends. They were all sharing the pain. The pain was not just in finding out that they were ill. In many cases, the pain was in being ill for years and in not understanding why they were not able to relate to their families, why they were not able to work effectively in their businesses and why their friends were not able to relate to them anymore because they were not the same person. I will always remember the woman who sat in front of us and said she did not know herself anymore; she used to be someone different. She said that 10 or 11 years ago she had lost herself. One lesson out of this inquiry is that we as a community must help all of those people refind themselves so they no feel longer isolated or afraid due to the condition we now know as hep C.

Another lesson from this inquiry is that organisations must be able to keep better records. I was amazed to hear how people learnt about this condition in the seventies and eighties. People were in hospital, people were seeing doctors, people were donating blood and when we tried to find clear evidence from that time from the doctors, from the hospitals and from the blood banks it was not all available. We heard about the Lookback program. We all know that it is not working. We know that it must work better because people have a right to know their medical histories and to find out the cause of their condition, if that can be discovered. The Lookback program has not been able to enable them to do that because of the complexity and the interrelationship of the different record-keeping systems across the country. In 2004 that is something we must learn. That kind of complexity and confusion must be addressed. We as citizens have the right to know our medical histories and to be able to trace them. I do not know how far we can go back, but we should be able to say that from 2004 records about us should be accurate.

Another clear lesson from this process is that there must be understanding and better support from the medical services. I was amazed to hear that some of the worst cases of discrimination against people who had hepatitis C were perpetrated by people in the medical profession. This came out particularly in New South Wales but not only in New South Wales. There seems to be a significant lack of effectively trained and sensitive people across the range of medical professions who can provide the immediate medical help and the personal support the patients need not only at the time of identification but through the whole process of their condition—and not just for the patients themselves but also for their families. As Senator Hutchins said, we heard very sad cases where families had been destroyed by this condition, where people had lost their families as well as themselves. These groups in our community need sensitive support and counselling, not just immediately and not just for a short time but into the future. This counselling should be done in such a way that it is flexible so people can access it when they need it without too many barriers or obstacles. That must be one lesson we learn from this process.
We should have an education campaign for the wider community. In one hearing someone said to me that, if one thing could be achieved out of our inquiry, it would be an effective across-the-board education program so that people could understand what this condition is all about, the various ways in which it can be acquired and that people who have it are living beside us on a daily basis and are not somehow unclean or not able to be communicated with. Over and over again we heard that people who had hep C felt that they had been rejected by their community, that somehow they no longer had a role to play in the community, that they had been isolated and that in many ways they felt betrayed. An education program is not just something in a paper; it is not just a sign in a doctor’s office. In this day and age in 2004 there is a wide range of education programs available. We should be able to come up with something that actually works. It is important that, when we are developing these programs, we involve the people with the knowledge. The people who came to our inquiry have the knowledge. They have had the pain, they have had the experience and, moreover, they have had the courage to say: ‘Look at me. I have this condition and I am here. Learn from me, and we can grow together in a community and be stronger and better.’

We heard during the inquiry that some had acquired the condition. We heard that some wonderful people and organisations had set up support groups to work with the community. The Tainted Blood Product Action Group in New South Wales has done amazing work to get people to connect with each other and to understand and feel as though they have a right to be heard. We also heard from people from the various medical professions and from the Australian Red Cross. There was goodwill around our inquiry. People wanted to find a way forward. But the sad thing was that up until this inquiry they seemed not to have been talking to each other. People had been isolated not only by their condition but also by the people with whom they needed to communicate. They had felt rejected and there was a wide gap through which there did not seem to be any way of communicating. If people could just listen to each other instead of closing their minds and their hearts to what people are saying, we would actually know where to go after the inquiry. I think that has been achieved in some way, because I do believe that this inquiry at least got the various groups talking to one another without immediately going into battle lines.

There must be acceptance in the process that follows that there is not a typical person with hepatitis C. Everybody has different needs and everybody has different expectations of where we should go next, but one thing this Senate inquiry has done is to let the community know that they have a right to be heard, that this is an issue that must be talked about publicly and that people should not be labelled and isolated because of a medical condition that they have acquired. I hope that the lessons that we have learnt from this inquiry are that there is no-one in the community that needs to be totally isolated, that we have opportunities to work together and that we have opportunities to learn and move forward. That is not to stop any litigation or process that is going on—because everyone has a right to that as well—but we must be able to do what the spokesperson from the Red Cross said:

What we would now like to focus on is the present and the future and we would like to discuss with you today how we are able to move forward beyond the Senate inquiry.

We are keen to work together, we are keen to listen to each other and, somehow through all of this, the Senate inquiry will have done its job and we will have awareness and some
way forward so that hepatitis C is known, understood and supported. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

BUDGET
Consideration by Legislation Committees
Reports

Senator McGauran (Victoria) (11.16 a.m.)—Pursuant to order and at the request of the Chairs of the respective committees, I present reports of the following legislation committees on the 2004-05 Budget estimates: Community Affairs, Environment, Communications, Information Technology and the Arts, Legal and Constitutional, and Rural and Regional Affairs and Transport Legislation Committees, together with the Hansard record of proceedings and a document presented to the committee.

Ordered that the report be printed.

Workplace Relations
Amendment (Award Simplification) Bill 2002
Workplace Relations
Amendment (Better Bargaining) Bill 2003
Workplace Relations
Amendment (Choice in Award Coverage) Bill 2004
Workplace Relations
Amendment (Simplifying Agreement-Making) Bill 2004
Report of Employment, Workplace Relations and Education Legislation Committee

Senator McGauran (Victoria) (11.17 a.m.)—On behalf of the Chair of the Employment, Workplace Relations and Education Legislation Committee, Senator Tierney, I present the report of the committee on the provisions of the Workplace Relations Amendment (Award Simplification) Bill 2002 and three related bills, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Civil Aviation Legislation
Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003
Report of Rural and Regional Affairs and Transport Legislation Committee

Senator McGauran (Victoria) (11.17 a.m.)—On behalf of the Chair of the Rural and Regional Affairs and Transport Legislation Committee, Senator Heffernan, I present the report of the committee on the provisions of the Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Migration Amendment
(Judicial Review) Bill 2004
Report of Legal and Constitutional Legislation Committee

Senator McGauran (Victoria) (11.18 a.m.)—On behalf of the Chair of the Legal and Constitutional Legislation Committee, Senator Payne, I present the report of the committee on the provisions of the Migration Amendment (Judicial Review) Bill 2004, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Business
Rearrangement

Senator Ellison (Western Australia—Minister for Justice and Customs) (11.18 a.m.)—At the request of the Manager of Government Business in the Senate, Senator Ian Campbell, I move:
That—

(1) On Thursday, 17 June 2004:
   (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to 10.30 pm;
   (b) consideration of general business and consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) not be proceeded with;
   (c) the routine of business from not later than 4.30 pm shall be government business only;
   (d) divisions may take place after 4.30 pm; and
   (e) the question for the adjournment of the Senate shall be proposed at 9.50 pm.

(2) The Senate shall sit on Friday, 18 June 2004 and that:
   (a) the hours of meeting shall be 9 am to 4.25 pm;
   (b) the routine of business shall be:
      (i) notices of motion, and
      (ii) government business only; and
   (c) the question for the adjournment of the Senate shall be proposed at 3.45 pm.

Question agreed to.

CORPORATIONS (FEES) AMENDMENT BILL (No. 2) 2003
Bill—by leave—taken as a whole.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (11.19 a.m.)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber yesterday, I understand.

The TEMPORARY CHAIRMAN (Senator Marshall)—The question is that the bill stand as printed.

Question agreed to.

CORPORATE LAW ECONOMIC REFORM PROGRAM (AUDIT REFORM AND CORPORATE DISCLOSURE) BILL 2003
Bill—by leave—taken as a whole.

The TEMPORARY CHAIRMAN—The question is that the bill stand as printed.

Senator CONROY (Victoria) (11.21 a.m.)—The Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003 is affectionately known as CLERP 9. During the second reading debate I spoke on the following issues: empowering shareholders, proxy voting, disclosure of beneficial ownership, analyst independence and conflicts of interest. I do not propose to comment on these issues in depth again. Instead, I would like to comment on the other provisions of the CLERP 9 bill which I did not mention yesterday. These provisions include the transparency in relation to the FRC, audit reform, penalties and ASIC’s power to issue infringement notices. I will also discuss our amendments relating to shareholder approval of termination payments which exceed one year’s salary. Before I discuss these amendments, I would like to respond to the press release of the Parliamentary Secretary to the Treasurer which he issued yesterday. In his press release he called Labor’s amendments ‘last minute, prescriptive and unnecessary’.

I will also discuss our amendments relating to shareholder approval of termination payments which exceed one year’s salary. Before I discuss these amendments I would like to respond to the press release of the
Parliamentary Secretary to the Treasurer, Mr Ross Cameron, which he issued yesterday. In his press release he called Labor’s amendments ‘last minute, prescriptive and unnecessary’.

**Senator Murray**—Very unfair!

**Senator CONROY**—I will take that interjection, Senator Murray. Anyone who has followed the CLERP 9 debate has been fully aware of Labor’s amendments since October 2003, when we released our first discussion paper on CLERP 9 and indicated the issues which Labor believed should form part of the bill. Since then we have tested our proposals through the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the CLERP 9 bill. We received widespread support for many of our amendments from a variety of groups, including the Australian Shareholders Association, the Australian Council of Superannuation Investors and Corporate Governance International.

After completing the inquiry we publicly released a document called *Labor’s guide to the CLERP 9 amendments*. This guide, which we released on 30 May this year, set out the amendments which Labor proposed to move to the bill.

In the same week that we released the guide, we released the text of our draft amendments and specifically emailed a copy to Mr Cameron’s office. Mr Cameron’s office had the majority of Labor’s amendments for at least two weeks. We released the text of the draft amendments to allow further consultation. We have received feedback on the draft amendments and made changes accordingly. The revised amendments were sent to Mr Cameron’s office on Tuesday night. We have received widespread support for releasing the text of our amendments and for consulting on them. We have had an excellent response to that consultative process and it is disappointing to see the parliamentary secretary’s office make such unfounded allegations in his press release, which received some coverage in today’s papers.

I wish to put on the record that we have extensively consulted on this stage of the bill, more so than at any other stage of this lengthy bill. We have attempted to cooperate with the government. We think this bill, albeit that it does not go far enough, is an important bill. We have sought to facilitate the passage of this bill. In the next week and a half that remains of this parliamentary session before the implementation date we seek, again, to facilitate the passage of this bill. We hope that the government will take its head out of the sand and not unilaterally reject all of our amendments, Senator Murray—the government is refusing to support every single one of them.

I hope that the Senate sees it a little differently and that the government will ultimately be willing to make sensible amendments to the bill, which covers some areas where the government did not want to go. That is all I wanted to say in the committee of the whole stage. I will pass on to anyone else who wants to talk in general, then we can have some discussion on individual amendments.

**Senator MURRAY** (Western Australia)

(11.25 a.m.)—I support those remarks. I have noticed in the past with some committees that I am on and some issues that I deal with that the media have remained ignorant of many of the issues that have been canvassed and put out by senators—floated and assessed by witnesses in advance, really signalling their intentions. That is not true of this occasion. The media have followed the CLERP 9 bill very closely and reported it rather well, I thought. So there is no excuse for anyone out there thinking that the issues that Senator Conroy has put in his amendments, or that I have put in my amendments on behalf of the Democrats, have not been
well signalled and well canvassed in advance.

It is entirely proper for the government to disagree with either my amendments or those of Senator Conroy. But that is a policy debate. It does the government no good to put out press releases which the community—which is closely involved with this process—knows to be wrong. It makes the government look less than competent. It is unfair, I think, to members of the Treasury and advisory bodies that have been assisting the government in this matter as well, because they have paid a great deal of detailed attention. I hope that following this debate the government’s response and views will be considered and will not represent an automatic kind of mentality: ‘We’re the government, we’ve been elected, we deserve to run the show as we see fit.’

The other point I want to make in general as we begin is that the Parliamentary Joint Committee on Corporations and Financial Services have produced two reports on this bill, after lengthy, detailed and comprehensive consultation. They have produced a large number of recommendations to address what they felt were areas that needed improvement or areas which needed further amendment. In the part 1 report there were 27 recommendations from the committee. That does not mean they are all matters for this bill today, because a number of those recommendations did affect ASIC processes and those sorts of things.

In the part 2 report there are a further 34 recommendations—a nearly unanimous set of recommendations in many cases. The Parliamentary Joint Committee on Corporations and Financial Services has members of the Liberal Party, the Labor Party and the Democrats on it, and it has produced 61 recommendations. That indicates that, when you are dealing with an issue as difficult, complex and interactive as this, you need to be flexible and prepared to address amendments. I do not think it is unreasonable that Senator Conroy has put out a large number of amendments which reflect Labor’s policy concerns. I do not think the government should demean—and I am sure the minister at the table, Senator Ian Campbell, does not take that view—the process by which those amendments are produced. By all means oppose the policy, but I think the process has been proper.

I want to conclude these remarks with a question under the general process we are in at the moment. I think that in this case the government has perhaps been at a disadvantage to the committee in that we have been living with where we have been going for a while and the reports have just come out. With respect to those 27 recommendations from part 1 of the committee’s report and the 34 from part 2, how does the government propose to handle those? I would assume that you will amend what you can at present and may come back with further amendments to the bill at a later date. Perhaps you could let us know what process you propose.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (11.31 a.m.)—It will not be any surprise to Senator Murray or to Senator Conroy to say that we have picked up a couple of recommendations which I think have been agreed—the due diligence defence for continuous disclosure breaches and the beneficial ownership provisions. They have come straight out of the report. There are a couple of others that Senator Chapman raised with me this morning that he was keen to see progressed. The recommendations from the second part of the report, which I understand was tabled only just over 24 hours ago, I do not think we could sensibly progress within this legislative structure.
I think even Senator Conroy agrees that once we resolve our policy differences it is very much in the interests of Australia to have CLERP 9 enacted within the next couple of days, if that is possible—today, if possible. Apparently the second reading speech says that the federal government will thoroughly review the joint statutory committee’s recommendations and then progress amendments that flow from those recommendations in the next available legislative vehicle. As Senator Murray and Senator Conroy would know, there are probably at least a couple of times a year when we have a couple of days dedicated to improving the financial services legislation so there will always be opportunities. I presume that my new financial services colleague, Mr Cameron, will be progressing CLERP 8 at some stage—the forgotten CLERP, I like to call it. That will again be a very important measure of reform that will come before the parliament in the not too distant future. That is at least one opportunity that springs to mind to progress those amendments.

Senator MURRAY (Western Australia) (11.33 a.m.)—What I am about to say is as much for the advisers in the box and the parliamentary secretary in that distant place as for you, Minister. I have in fact addressed only one of the committee’s recommendations in my sheets. I am looking at possibly trying a few more but I would appreciate it if a decision were made on that.

The real point I want to make to you is this: if the government were able to produce some, I am not suggesting all, of the easiest amendments arising from the committee reports and agree them with my office and Senator Conroy—it would need to be three way—we as a party would be more than happy for those amendments to be introduced to the Senate as a noncontroversial bill next Thursday. I cannot speak for Senator Conroy; he would need to speak for himself. But my party would look on that with favour and would be prepared to move those extra amendments. We are suggesting to you that, to ensure the law comes into place by the end of this month, we would be happy to see a small noncontroversial bill come through provided it is agreed between the three of us.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (11.35 a.m.)—That it is a very useful and constructive suggestion that has been put forward by Senator Murray. The practical and political reality here which will emerge over the next few hours is that there is a fundamental policy difference between the government and the opposition on how you approach some parts of this legislation. The reality is that probably 95 per cent of CLERP 9 has the full support of everybody in the chamber. There are differences of achieving similarly desired outcomes in relation to things like analyst independence and so forth. The government has had, as everyone would attest, significant and lengthy consultation—so lengthy in fact that when I was in charge I was criticised. I was pleased to see that the joint committee also took its time and did a diligent job at reviewing it.

The process that we have gone through as a legislature and as a government has been a far better process than, for example, what occurred in the United States, where they rushed in a bunch of measures because of the looming congressional elections, I suspect, the politics around it all and a desire for that administration to get it off the political agenda. In hindsight what we have done here is a lot better way to approach issues that were front page news, highly politicised and highly focused on by people. When you are making changes to the Corporations Law you should not really be looking at responses that are quick political fixes or that look good for a few weeks. You really have to think about how it is going to affect the way
business is done in Australia and how we interact with the rest of the world for, I would like to think, 10 to 20 years in advance.

The process we have gone through has been a very good one, both from the government’s point of view when I was running it and when we handed across the legislation and the joint committee started the legislature process. So I think it has been a good process. But, as Senator Conroy has indicated—and he has put his views out there for the world to see well in advance and he has come up with amendments which reflect that Labor policy—there will be substantial differences in this debate. I think what will occur—and I guess it is in our hands here—is that there will be some amendments we will agree to and there will be some we will not agree to. The Labor ones we have strong objections to, and Mr Cameron has indicated that publicly in his own way. So that is one reality we have to deal with.

The other reality is that we are now, by everyone’s assessment and according to the normal political timetable, within a few weeks or months of an election. Most people would expect an election before Christmas. The political and practical realities—which tend to merge right now—are that Labor have stated a very clear policy in this area. It is one of the few areas in which they have actually stated a policy, to be frank. They have, to their credit, supported the majority of the CLERP 9 approach, but they have made some significant differences. I think I speak for Mr Cameron and Mr Costello when I say that we would like to see CLERP 9 enacted as close as possible to the government policy, with some minor amendments.

We will not be accepting any of the Labor amendments, and that will be frustrating for Senator Conroy. The reality is that he will be able to say: ‘I have tried to amend this law. Here is the Labor position. Should a Labor government be elected, this is what we will do to change the law.’ Literally within months they could come back, if they win the election, and make the law in the shape they want it to be, undoubtedly with the support of the Democrats. I presume, Senator Murray, you will be indicating support for some of their amendments. So I think there is a democratic solution to this. I presume that we will have a debate here. It will be a well-informed debate because of the work we have done in our own ways. If the Senate amends the legislation in a way that is unacceptable to the government, I presume that in the other place the government will seek to send it back to the Senate. I hope that the CLERP 9 legislation can be enacted in the form in which we get it out of this place. As I said, if Labor win the election, they can bring it back here.

In terms of the report of the joint statutory committee and the process you have outlined, Senator Murray, I will energetically see whether the government is able to pick up some of the easier amendments from the report and put them through the proper processes. They are amendments or changes that I think, without having studied them closely, would probably need to go through normal government processes. That is not to say that, in an environment of cooperation and in the spirit of progressing reform, we cannot seek to go down the course that you have outlined. If it is possible to do that, I will certainly seek to do it, because it will show that the government is fair dinkum about getting the guts of CLERP 9 in place for the benefit of Australian businesses who will have the certainty of knowing what the law will be in the coming financial year. I think your suggestion is a positive one, Senator Murray. I will seek from my perspective to progress that. What I have sought to do in this intervention is to describe the way I

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think the process should go over the next few hours.

Senator MURRAY (Western Australia) (11.42 a.m.)—To conclude, I make the following points. Obviously, the committee itself has consulted. So, in a sense, that does much of the work that you might otherwise think you would have to do. Secondly, those recommendations were unanimous. Therefore, that should give you a signal that they will be supported in the chamber. Thirdly, apart from you, the parliamentary secretary and those within the Treasury who are experts in this area, the committee is the next expert body. Therefore, you are getting expert advice. The last point to make is that the government have found time to at least address some of the recommendations—very few, but some of the recommendations—in part 1 of the committee’s report. They have said that they have not had enough time to address part 2. I cannot conceive that none of the 34 recommendations would be acceptable to the government. I understand that the cabinet meet on Monday or Tuesday. It would seem to me that, if you put some skids under the Treasury advisers, they could certainly get at least one or two forward. That gives more certainty to the law and would reflect things the committee is concerned with. The offer I am making is that we will be cooperative in that process.

Senator CONROY (Victoria) (11.43 a.m.)—I note Senator Ian Campbell’s comment that the Sarbanes-Oxley Act in the US was rushed. I can only say, having met Senator Sarbanes last week in Washington, that he does not think that at all and he had already had a bill on the table for some months.

Senator McGauran—Did you meet George? He likes you!

Senator CONROY—Unfortunately, the White House was closed on the day we were to go there, due to President Reagan’s funeral, Senator McGauran.

The TEMPORARY CHAIRMAN (Senator Watson)—Address your comments through the chair please.

Senator CONROY—Thank you. I accept your admonishment, Mr Temporary Chairman. I note Senator Ian Campbell’s comments about how it was a far more ‘thorough process’ and less rushed here in Australia. Some would even suggest that the government was dragged to this kicking and screaming, in fact, and that the only reason this bill has emerged at all is that there is an election looming. The government is doing the minimum amount that it can to remain credible, in its eyes, on corporate governance issues.

This bill represents a watering down of the government’s own commitments. The Treasurer, Peter Costello, appeared on national television on the 7.30 Report and in relation to the HIH Royal Commission recommendations said, ‘We will implement them all.’ This bill falls well short of that. Even though Senator Campbell has moved on to higher things now, he was a key participant at the time of the drafting of this bill. This represents Senator Campbell undermining the Treasurer. When the Treasurer goes on national television and says, ‘We will implement every single one of these recommendations,’ and Senator Campbell turns up a year later with a bill that undermines the Treasurer in such a public way, you have to say this government is determined to do as little as it can to try and address these issues.

I would not want Senator Murray to feel that his offer would not be taken up by Labor. Many of the amendments that we drafted actually cover the recommendations that were agreed to in the second report. While I accept that the government, based on its track record, needs about three years to
move on to the next stage, in actual fact many of the amendments are available right now to be acted upon. They were unanimously agreed to, and we can deal with those here. I take note of Senator Murray’s offer and his indication that he wants to work closely with government and Labor and that we need a tripartite agreement on these issues. I welcome that offer; I wish it had been around yesterday when the Democrats cravenly caved in to IFSA and the government on fee disclosure issues. I wish that tripartite spirit had been available yesterday. Perhaps we would have got a better outcome for consumers in this country if Senator Murray’s goodwill and good spirit had been available yesterday. However, as I want to move on to the amendments, I will allow the government to move the first of its amendments.

Senator IAN CAMPBELL—by leave—I move:

(9) Schedule 1, item 9, page 5 (line 16), omit “(b)”, substitute “(a)”.  
(10) Schedule 1, item 9, page 5 (line 18), omit “; or (c)”, substitute “(aa)”.

(11) Schedule 1, item 9, page 5 (line 19), at the end of paragraph (c), add “or”.

(12) Schedule 1, item 17, page 10 (line 15), after “FRC”, insert “, acting on behalf of the FRC.”.

(13) Schedule 1, item 17, page 11 (line 3), after “FRC”, insert “, acting on behalf of the FRC.”.

(14) Schedule 1, item 17, page 11 (line 33), after “FRC”, insert “, acting on behalf of the FRC.”.

(15) Schedule 1, item 17, page 12 (line 1), before “the FRC”, insert “the Chair of”.

(16) Schedule 1, item 17, page 12 (line 8), before “the FRC”, insert “the Chair of”.

(17) Schedule 1, item 17, page 12 (line 18), after “at that time that”, insert “the Chair of”.

(18) Schedule 1, item 17, page 12 (line 20), after “that”, insert “the Chair of”.

(19) Schedule 1, item 32, page 21 (after line 13), after paragraph (e), insert:

(ea) is made to APRA for the purposes of its performance of its functions; or

These amendments relate to audit oversight, and I am told that they are basically technical amendments.

Question agreed to.

Senator CONROY (Victoria) (11.49 a.m.)—by leave—I move opposition amendments (1) to (11) and (13) on sheet 4216 revised:

(1) Schedule 1, item 14, page 7 (line 5), omit “approving and monitoring”, substitute “providing feedback on”.

(2) Schedule 1, item 14, page 7 (line 11), omit paragraph 225(2)(c).

(3) Schedule 1, item 14, page 7 (line 12), omit “directions, advice or”.

Leave granted.
(4) Schedule 1, item 14, page 8 (line 3), omit “approving and monitoring”, substitute “providing feedback on”.

(5) Schedule 1, item 14, page 8 (line 9), omit paragraph 225(2A)(c).

(6) Schedule 1, item 14, page 8 (line 10), omit “directions, advice or”.

(7) Schedule 1, page 10 (after line 2), after item 14, insert:

**14A Subsection 225(5)**

Repeal the subsection, substitute:

(5) The FRC does not have the power to:

(a) direct the AASB in relation to the development, or making of a particular standard; or

(b) veto a standard made, formulated or recommended by AASB; or

(c) determine the AASB’s broad strategic direction.

(8) Schedule 1, item 16, page 10 (lines 8 to 11), omit subsections 225(7) and (8), substitute:

(7) The FRC does not have the power to:

(a) direct the AUASB in relation to the development, or making of a particular auditing standard; or

(b) veto a standard made, formulated or recommended by AUASB; or

(c) determine the AUASB’s broad strategic direction.

(9) Schedule 1, page 12 (after line 25), after item 17, insert:

**17A At the end of subsection 227(1)**

Add:

; and (f) to determine its broad strategic direction.

(10) Schedule 1, item 18, page 13 (after line 25), at the end of subsection 227B(1), add:

; and (f) to determine its broad strategic direction.

(11) Schedule 1, items 19 and 20, page 14 (line 17 to 20), omit the items, substitute:

**19 Section 232**

Omit paragraphs 232(a) and (b).

(13) Schedule 1, item 22, page 15 (lines 24 and 25), omit paragraph 234C(a).

(15) Schedule 1, item 26, page 17 (line 10), omit the item, substitute:

**26 Paragraph 236A(3)(a)**

Repeal the paragraph.

Schedule 1, item 28, page 17 (lines 23 to 26), omit subsection 236E(2), substitute:

(2) The AUASB shall hold its meetings in public except to the extent that a meeting considers:

(a) matters relating to the appointment or retirement or performance of members of a subcommittee of the AUASB; or

(b) matters which are of such a sensitive nature that a public meeting would be inappropriate.

The opposition also opposes schedule 1 in the following terms:

(14) Schedule 1, item 26, page 17 (lines 9 and 10), TO BE OPPOSED.

These amendments increase transparency in relation to the operation of the Financial Reporting Council. The FRC is a body that operates in secrecy. It does not hold its meetings in public, it does not have appropriate consultation processes and its secretariat is provided by the Treasury. During the inquiry conducted by the PJC, the ex-chair of the AASB, Mr Keith Alfredson, shone some light into the operation of the FRC. He advised the committee:

... the 2005 decision—
this is in relation to international accounting standards—
was made without any FRC paper that firmly debated the issues or all of the arguments in favour and against. I had a paper on a late edition—

I do not recall a comprehensive paper that set out the arguments for and against, and the issues and implications.

He went on to say:

All I am saying here is that I think the whole process lacked robust and formal consultation.

... ...

... if you compare our process with what happened in New Zealand and the UK you would have to say it was not as robust.

The gravity of these comments should not be underestimated. It was always a political fix. It was always a committee controlled by the government. The decision to move to international accounting standards is one of the most significant decisions that has been made in relation to Australia’s financial reporting regime. Yet it appears the decision was made without appropriate consideration or consultation.

I think Senator Murray was present when we had a discussion with the then deputy chairman but now chairman of the FRC, Mr Charles Macek. Mr Macek basically had to concede all of Mr Alfredson’s points. He had to concede there was no paperwork, there was no serious consultation, there was no appropriate discussion or documentation and he was embarrassed by that. At least I think he was embarrassed by that because he clearly conceded that sort of process could not happen again.

This is a footnote. Senator Campbell and Senator Murray, I know you are very interested in these issues. There is a report in today’s paper that one of the international accounting standards, No. 39—which is critical to the whole framework—has been vetoed by four countries in the European Union. For those who say that parliament is not the place where accounting standards should be discussed, that it should be a rubber stamp for this process, let us make it clear: four countries, led by France, have put a massive hole in the middle of the process of the international accounting standards. Vested business interests in Europe are sabotaging the adoption of international accounting standards. That is really serious. It has left a huge hole.

IS39 underpins many of the other standards. Without No. 39 being endorsed, it calls into question where we will get to with the rest of the standards that this country is going to adopt. However, it does say that we are entitled to have a robust process, to consider these standards on their merits and, particularly after this decision, to reconsider the start date. We cannot proceed to adopt international accounting standards with the huge hole that has been put into this process. It may be that we decide we want to adopt IS39 in its own right. That standard has much merit and, as I said, many others hang off it. We need to look at the gutting of the role of the Australian Accounting Standards Board and we need to have a robust debate in this country about where we go next.

Unfortunately, because of the way the government have put in the fix, we are not going to be able to have that debate. It is a bit like Groundhog Day—back to 28 June 1998, and a round-up of the usual suspects: Senator Campbell, Senator Murray and Senator Conroy. You can see the far-reaching effects of the decision taken by this chamber, by the government—and, tragically, supported by Senator Murray—to give the FRC the power to direct the International Accounting Standards Board. Six years later, we are living with the consequences. Senator Murray, I implore you to support the amendments that I am moving today. It will
not rectify the mistakes of the past, Senator Murray, but it will go some way towards that.

Our amendments ensure that important decisions such as those I have been discussing are taken with the appropriate consultation. Labor’s amendments require the FRC to openly consult on key issues and to hold its meetings in public—of course, subject to the consideration of certain sensitive issues such as the appointment of members to the AASB and the AUASB. The powers of the FRC to set the strategic direction of both the AASB and the AUASB have come under heavy criticism during the PJC inquiry. A number of witnesses questioned how the FRC could set the broad strategic direction of these bodies without also encroaching on the technical content of the standards. Accordingly, our amendments remove the powers of the FRC to set the broad strategic direction of the AASB and the AUASB and modify the powers of the FRC to approve the priorities, business plans, budgets and staffing of the AASB and the AUASB. As I said, we cannot undo the damage that has been done.

I have said publicly before and to the then chair and now to the current chair of the FRC that I believe the FRC have acted illegally. I believe they have broken the law on a number of occasions by giving directions about the adoption of technical content. If directing the adoption of a set of standards is not directing the technical content, I do not know what is. On a number of occasions the FRC, following strong criticism of it at the Senate estimates process, has gone back and amended its directions because it has conceded that it has stepped across the line. The FRC has gone back and reconsidered a direction on content. It has then withdrawn its direction and just left it as a suggestion. We all know that was a joke. Everyone got the message. AASB’s membership is appointed by the FRC. They all understood what they had to do. They all understood that the FRC was in fact dictating the content of Australian accounting standards and that it expects the Australian parliament to just rubber-stamp it. The government say that the CLERP 9 bill will enhance transparency, yet it fails to do so in relation to the standard setting framework. It should be independent because that is the way it was set up statutorily. Under the CLERP 9 bill, the FRC will remain shrouded in secrecy unless the government and hopefully the Democrats support Labor’s amendments.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (11.58 a.m.)—The government will not be accepting the Labor amendments. I understand the Joint Statutory Committee on Corporations and Financial Services has made some recommendations about the direction setting powers of the FRC. I have already given an undertaking that the government will review those recommendations as quickly as possible and that, if there is an agreement, we will bring in amending legislation. Senator Murray has suggested that we bring it here next Thursday and make it non-controversial. That would suit me in my other job as Manager of Government Business in the Senate. I have given an undertaking to do that.

Senator Conroy remarked that the FRC reforms that came in here as part of the first CLERP legislation were designed to modernise the accounting standards setting in Australia. This parliament passed a law that gave a very clear direction that as a country we wanted to move to international accounting standards. It is in the law. It asks the FRC to take a lead role in that. They have done that. There are a lot of people in the accounting profession who—to use Senator Conroy’s words—have been dragged kicking and screaming towards the concept of Australia being part of a single global set of account-
Anyone has looked at the complexities of it—and I know Senator Conroy and Senator Murray have—could not regard it as an easy change to make. It is not an easy thing to do.

If you take away the hijinks and the beat-ups that have occurred, the reality is that since 1998 both the FRC and the AASB have done enormous work. There has been some friction, but it has been very minor friction. When you look at the task that those two bodies undertook, they have achieved a remarkable amount. We reformed it in a genuinely reformist way to bring the accounting standards out into the open and to expose international accounting standards for scrutiny by the nation and the international communities. It would not have happened if this parliament had not taken the lead. It was an ‘out there’ move when we did it; it was a dramatic thing to do. We could have just fumbled along and said: ‘Let’s leave it; let’s not do it. Let’s get to international accounting standards when they get there.’ We would still be talking about it if the government—and, to this parliament’s credit, the parliament—had not said, ‘Let’s see Australia use whatever leverage and credibility it has in this area,’ which is enormous, ‘to take a constructive role and create a lead in this international effort to get to a single, global set of accounting standards.’

Senator Conroy is quite right: there will be setbacks. There are vested interests in all of the jurisdictions who will try to stop this, but Australia’s role has been absolutely fantastic. The late Ken Spencer; Warren McGregor; Jeff Lucey, the chairman of ASIC; Keith Alfredson and all of those very good people on the FRC and the AASB worked through differences. As a result of the reforms, Australia’s credibility on these issues, which was very high back in 1998, is even higher now. So it is a great credit to all of those people. Yes, they will have differences from time to time, but my strong view is that the structure we set in place here is one that has served Australia very well—so well that CLERP 9 seeks to enhance that. We were ahead of the world with what we did in 1998 and, through CLERP 9, we seek to take the best of that reform in 1998 and to pick up the concepts that were incorporated in the PCAOB in the United States but in a way that I think is better.

The ALP amendments would be a retrograde step, and quite frankly I think they are motivated by a bit of payback—it is probably being a little uncharitable—by a few people who are ideologically opposed to moving to international accounting standards. They would like us to have a cute little set of standards here in Australia—two per cent of the global market—instead of winning the argument about the desirability of Australia to be part of a single, global set of accounting standards, but they have decided to turn on the process and say, ‘Let’s not talk about the desirability of international accounting standards; let’s talk about how they got there.’ It defies the facts to say that there was not an informed debate in the FRC, the AASB or in the accounting or business communities about the move to international accounting standards. This debate has been vigorously going on in the FRC, the AASB, the professional accounting bodies, the business community, the international business community and the international corporate regulatory community since the mid-1990s. To say that the FRC came up with some uninformed, bizarre, secret, out-of-the-blue decision is an insult to the people on the FRC and all of the other people who have taken part in the debate.

Senator CONROY (Victoria) (12.04 p.m.)—I want to correct the record. Senator Campbell, I know it was six years ago, almost to the day, but in fact you are wrong. Back in 1998, as the then parliamentary sec-
retary, you attempted to pass a law through this parliament directing the adoption of the international accounting standards, and it was defeated. It was actually removed. To suggest that there was some process is in fact wrong. You tried to mandate the adoption, and this parliament rejected your attempt. You stand here today and say some sort of process has been gone through, but there was no process. You tried to mug the rest of the country by foisting your view about the accounting standards Australia should adopt. You tried to move it in parliament. There was no process. You had been convinced by a few mates at the Stock Exchange that this was what we needed to do.

For the record, Labor has consistently supported moving to international accounting standards, as has Senator Murray on behalf of the Democrats. We are not motivated by some desire to stop us getting there. We have consistently supported the adoption of international accounting standards. Fundamentally Senator Murray, Labor and the government have supported the time frame of 2005, albeit with warts on. But some of the developments in the last 48 hours do cause us to think about where we are going and where we are pushing on to. Let us be clear about this: back in 1998 the International Accounting Standards Board was a joke. It had no funding. It was a part-time operation and the quality of the standards that existed in 1998 was considered to be a joke. That is not my opinion; that is a broad international opinion.

It is a credit to all involved that the International Accounting Standards Board has been professionalised. Sir David Tweedie is somebody who deserves our support. He has met with Senator Murray, he has met with me—both here and in London on numerous occasions—and I know he has met Senator Ian Campbell and Parliamentary Secretary Cameron since then. Sir David Tweedie deserves support because Sir David Tweedie has his heart, his mind and his intellectual rigour in the right place. He wants to stand up to vested interests. He wants an internationally credible set of standards. But let us not forget that, back in 1998, this board was a joke. Senator Ian Campbell and this government tried to foist on this country a set of standards that was considered to be a joke. One of the reasons it was defeated was that a very credible set of people in this country who understood the issues said, ‘You can’t adopt this process. It is a joke. The quality of the standards that you’re asking us to adopt is a joke. The International Accounting Standards Board itself does not have the resources or the intellectual grunt to do it.’

Why is that? It is because here in Australia we actually do have a whole string of people who are internationally credible on accounting standards. We have punched above our weight for many, many years, and we have done that because we have had a rigorous domestic standard-setting process. My concern about the new regime that we are moving to is how we are going to retain that set of credible people. Already many people have resigned from the Australian Accounting Standards Board. It is a miracle and a credit to David Boymal and those who are soldiering on on that board that they can be bothered, because they have got the message from this government and from the FRC that they are simply to adopt whatever standard is approved by the International Accounting Standards Board.

The good news is that most of the standards being put forward are of a sufficient quality to deserve our support. But there are some, as has now been proved with IAS 39, which are of a good quality and which are not going to be part of this process. If we go down the path that we are blindly going down at the moment, we will adopt standards that are not necessarily better than the stan-
standards we currently have. That is a matter that this parliament should be concerned about, because our ability to attract capital to this country, keep our markets liquid and allow our good ideas to be converted into commercial operations is critical. We will be increasing the cost of capital in this country if we blindly adopt these standards, particularly with the hole that now exists in them.

I know people keep saying, ‘We’ve just got to blindly adopt these and it will lower the cost of capital.’ I say to you: no, Australia is a price-taker on this issue. We are not a big component of the world market. We must be at the cutting edge of accounting standards. We must have a better set of standards than most other countries so that international investors know they can come to this country, pick up a set of financial reports and know that they are meaningful—something they cannot do in many countries in the world at the moment. Many countries that are signed up to the international accounting standards have no intention of implementing them. The quality of the financial reports and the investors that we need to attract to this country will depend on the choices that unfortunately are not being made by the Australian Accounting Standards Board, with all the qualities of the people that are on it; they will be determined by a group of people who really have no serious qualifications and have had no serious discussion.

I repeat again to Senator Ian Campbell: read the evidence, read the testimony. I know he has many other responsibilities now, but he is behind the times. The testimony of the Chair of the Australian Accounting Standards Board, then a participant on the FRC and now the chair, confessed—agreed—that there was no process, there was no consultation and there was no paperwork. There was no paperwork at the FRC that was circulated more than 24 hours beforehand, which meant nobody read it. Nobody had time to actually study the proposal, and it was just a resolution. There were no supporting documents. There were no quality arguments taking place. This is admitted by the FRC’s new chair. I am not making this up; he said it on the public record. He would not allow that process that took place to take place again, Senator Campbell. So do not just stand up here and repeat your arguments from 1998. It is six years on and a lot has happened—a lot of good things have happened—but do not try and defend this process.

Under the new structure you are proposing—as has been explained—the chair of the FRC’s first recommendation for increased transparency is to sack most of the board and replace them with six or seven people. That is the first recommendation. He wants to neck the board and say, ‘We don’t need all these representatives from all these different organisations; we just need a commercial operation, run like a board of a company. There will be no representation from interest groups and no representation from users of financial reports—nothing at all. That is the structure we’re moving to.’ I say: let us put it out, let us shine the light on it and let us at least have a transparent process so that people can make an informed decision. The FRC have got a couple of tough decisions to make in the next few months about where they go now, what they do about IAS 39 and what they do about the undermining of the rest of the international standards.

David Tweedie will be shattered today, following that vote and that veto in the European Commission, because he has fought hard to get decent standards internationally and he has been done over by the recalcitrance of vested business interests in Europe and by the French. That is what has happened. Let us make sure that Australia can defend itself from bad outcomes internationally. Let us make sure we maintain some integrity and transparency in our processes.
Let us try to support those standard-setters on the Australian Accounting Standards Board. Give them some power. Senator Ian Campbell, I urge you to listen to this. I urge you to understand that, if we just make the Australian Accounting Standards Board a rubber stamp, no-one will bother to serve on it. That intellectual grunt that we have developed over many, many years will be frittered away because everyone knows there is no point in being on the board if we have to adopt what we are told to adopt internationally. So let us shine some light and restore some independence and integrity to the Australian Accounting Standards Board. It is faced with challenging times. It deserves our support. It does not deserve to be gagged and directed by people who are not competent to be giving it orders.

Senator MURRAY (Western Australia)  
(12.14 p.m.)—We are dealing with opposition amendments (1) to (11), (13) and (15) on sheet 4216 revised and their opposition to schedule 1, but, in addressing these, we are quite properly addressing the philosophy, the background and the history that attach to the FRC and AUASB institutions. It is proper to put into the context of this the question of the IASB and the question of the harmonisation—in fact, the adoption—of international accounting standards. Strangely, as often transpires in these debates, both sides are in furious agreement. There are undoubtedly immense benefits from adopting common international accounting standards. We are a huge trading country; we have many, many cross-border relationships of an economic and business nature. It is absolutely essential for the future growth, productivity, efficiency and effectiveness of our business community that we move to commonality, to a common language of accounting standards world wide. Therefore I put on record again—as I have time and time again—that the Democrats and I are strongly in favour of Australia’s adoption of international accounting standards.

Having said that, we have to test the proposition that the debate and the votes going on in Europe right now shake the foundations of Australia’s commitment and involvement. I am not certain as to that. I will qualify my remarks by saying that, of course, I am no expert in the detail of accounting standards. I very much doubt that any of us would make that claim. There are about 40 international accounting standards, and there are two that are fundamentally at issue. The one that Senator Conroy has referred to is international accounting standard 39, which very much attaches to the way in which financial instruments and assets are dealt with. As with all accounting standards, that has interrelationships with other accounting standards.

We should also say how many countries are affected by this. In the European Union, the intention is that 25 countries should adopt the standards. As I understand it, 38 out of the 40 standards are home and hosed with those 25 countries. That is pretty good. If we join with 25 out of the 200 countries in the world to adopt 38 out of 40 standards—at least that many, and perhaps the other two—that is a tremendous advance. Twenty-five out of 200 is not a real reflection of the percentage; the percentage is actually far greater, because we are mostly talking about leading first-world OECD countries. Australia itself is one country out of 200, or 0.5 per cent, but our place in the world economy is over one per cent. That is the statistical story.

I am alert to an analogy which may be false but I will describe it anyway. To me it is a bit like the common European currency, the euro. Three of the 25 countries in the EU—the others are coming on now—have decided not to adopt the common euro currency. That does not stop the European Un-
ion working effectively, adopting common processes and so on. I can see a possibility that they may seek to resolve this issue—certainly in the short to medium term—by a number of countries adopting standard 39 and others not doing so. When we are talking about the number of countries that are attached to international accounting standards, we should also be aware that many more hang off the back of them and pretty well run their own state systems with reference to them. That is largely because most countries do not have the depth or range of people to develop their own standards. There is a de facto process emerging.

For anyone following this debate, I must say that I think that Senator Conroy is right to raise an alarm, but I do not yet see the fire bursting over the mountain range. I think we have to be aware that there is smoke, take proper precautions and be very alert to how Australia reacts. The situation should not shake our commitment to, our belief in and our preparedness to compromise and sacrifice somewhat to achieve international commonality which will have immense benefits in other respects. Senator Conroy is exactly right that what we are seeing here is the most formidable alliance of vested interests who are really aggressively trying to undermine areas of change which will affect their balance sheets, their share prices and how much money they take home in their pockets. We must be aware of those motives. That is easily understood.

I turn to the question of the FRC’s relationship with the AUASB. Senator Conroy will take some pleasure in recalling his words in the debate in 1998 and his concern that the relationship might impede independence and the proper execution of the duties of those respective bodies. At that time, having carefully listened to the government’s proposition and the opposition’s proposition—both well informed—I took the view that, in the introduction of these new institutions and new structures, the government was entitled to trial them and get them under way. Six years later, we have the evidence as to how they have operated, an understanding of the strengths and the weaknesses, and a background as to how well people have performed their duties and to what extent they have been able to fulfil the original policy objectives of the government. What emerges is that it is an entirely good idea to retain the institutions but that they do need fundamental adjustment to strengthen them.

You will note from the Parliamentary Joint Committee on Corporations and Financial Services’ reports on CLERP 9 that the committee took evidence and unanimously resolved that there needs to be a fundamental change in the services and the financing of those institutions. Firstly, it is undesirable to have part-time Treasury officials seconded to these bodies; you need permanent, independent, career based staffing. Secondly, you need very secure funding. Thirdly, you need a separation of powers in which the AUASB has their role and the FRC has their role, and the two must respect each other. The opinion of the committee is that the FRC needs to be moved from a governing body to an oversight body—a watchdog and an assessment operation. I think that is a very good role for it to play. I am not suggesting that the institution and the relationships should be undone, but we need to introduce some greater integrity in the relationship.

Senator Conroy’s amendments on behalf of Labor, in fact, accord with the thrust of the committee’s unanimous views. I am a member of that committee. I heard the evidence, read the submissions and sat through the hearings. I have been a participant in these debates for many a long year and I would be surprised if the government, once it has considered the committee’s report more fully, did not end up agreeing with the committee.
It would be a very strange thing to reject an approach which does not undercut or bring undone the government’s initiative in 1998 and what it was trying to achieve. This approach does not threaten or criticise the achievements that have occurred through those institutions but, in fact, strengthens the policy and the program.

For those reasons, which are soundly based and were not formulated on the run, these amendments deserve to be supported. The Democrats will support them. When they come back from the House, we hope that the government will not have rejected them. If it has any adjustments, obviously we will consider those on their merits. But the heart of the matter is that we want the government to accept that the committee was right—the committee’s consultation and judgment have been right, and these amendments will advance and strengthen the institutions concerned without eroding the government initiatives and policy objectives as originally constructed. They were to advance Australia’s decision-making ability in terms of Australian accounting standards and to achieve a strong position in pushing through a common approach to international accounting standards so that we can talk a common language in our financial statements in terms of the raising and the cost of capital and in the way in which matters are reported internationally to shareholders who have cross-border relationships.

Question agreed to.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (12.27 p.m.)—by leave—I move government amendments (20) to (22) on sheet PK247:

(20) Schedule 1, page 30 (after line 5), after item 50, insert:

50A Subsection 1279(2)

Repeal the subsection, substitute:

(2) An application under this section:
(a) must be lodged with ASIC; and
(b) must contain such information as is prescribed in the regulations; and
(c) must be in the prescribed form.

(21) Schedule 1, item 54, page 31 (lines 10 to 13), omit the note.

(22) Schedule 1, item 56, page 32 (lines 15 to 22), omit subsection (1), substitute:

(1) A person who is a registered company auditor must, within one month after the end of:
(a) the period of 12 months beginning on the day on which the person’s registration begins; and
(b) each subsequent period of 12 months;

lodge with ASIC a statement in respect of that period.

(1A) A statement under subsection (1):
(a) must contain such information as is prescribed in the regulations; and
(b) must be in the prescribed form.

I think these amendments will unanimously be agreed to, so I will not go into detail. They basically go to the requirements about lodgment of forms for auditor qualification issues, approval of auditing competency standards by ASIC and annual statements by auditors.

Question agreed to.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (12.28 p.m.)—by leave—I move government amendments (24) to (76) on sheet PK247:

(24) Schedule 1, item 73, page 36 (line 22), omit “audit”, substitute “auditor”.

(25) Schedule 1, page 43 (after line 8), after item 90, insert:

90A After subsection 300(2)

Insert:
(2A) If subsection (2) is relied on to not include in the directors’ report for a financial year details that would otherwise be required to be included in that report under paragraph (11B)(a) or (11C)(b), that report must specify, in the section headed “Non-audit services”, where those details may be found in the company’s financial report for that financial year.

(26) Schedule 1, item 91, page 43 (line 18), omit “amount paid”, substitute “amounts paid or payable”.

(27) Schedule 1, item 91, page 43 (line 19), omit “by the auditor during the year”, substitute “during the year, by the auditor (or by another person or firm on the auditor’s behalf)”.  

(28) Schedule 1, item 91, page 43 (line 21), omit “by the auditor during the year”, substitute “during the year, by the auditor (or by another person or firm on the auditor’s behalf)”. 

(29) Schedule 1, item 91, page 43 (lines 25 and 26), omit “by the auditor during the year”, substitute “during the year, by the auditor (or by another person or firm on the auditor’s behalf)”. 

(30) Schedule 1, item 91, page 43 (line 29), at the end of subsection (11B), add “If consolidated financial statements are required, the details and statements must relate to amounts paid or payable to the auditor by, and non-audit services provided to, any entity (including the company, registered scheme or disclosing entity) that is part of the consolidated entity.”.

(31) Schedule 1, item 91, page 43 (line 30), after “paid”, insert “or payable”.

(32) Schedule 1, item 91, page 43 (lines 31 and 32), omit “by the auditor during the year”, substitute “during the year, by the auditor (or by another person or firm on the auditor’s behalf)”. 

(33) Schedule 1, item 91, page 43 (lines 34 to 35), omit paragraph (11C)(b), substitute:

(b) the dollar amount that:

(i) the listed company; or

(ii) if consolidated financial statements are required—any entity that is part of the consolidated entity;

paid, or is liable to pay, for each of those non-audit services.

(34) Schedule 1, item 91, page 44 (lines 3 to 7), omit paragraph (11D)(a), substitute:

(a) advice provided by the listed company’s audit committee if the company has an audit committee; or

(35) Schedule 1, item 95, page 49 (line 8), after “company”, insert “or registered scheme”.

(36) Schedule 1, item 95, page 56 (after line 17), after subsection 324CA(1), insert:

Individual auditor or audit company to notify ASIC

(1A) An individual auditor or audit company contravenes this subsection if:

(a) the individual auditor or audit company is the auditor of an audited body; and

(b) a conflict of interest situation exists in relation to the audited body while the individual auditor or audit company is the auditor of the audited body; and

(c) on a particular day (the start day):

(i) in the case of an individual auditor—the individual auditor becomes aware that the conflict of interest situation exists; or

(ii) in the case of an audit company—the audit company becomes aware that the conflict of interest situation exists; and

(d) at the end of the period of 7 days from the start day:

(i) the conflict of interest situation remains in existence; and

(ii) the individual auditor or audit company has not informed ASIC in writing that the conflict of interest situation exists.

Note 1: For conflict of interest situation, see section 324CD.
Note 2: If the audited body is a public company or a registered scheme and the notice under this subsection is not followed up by a notice under subsection 327B(2A) or (2C) (public company) or 331AAA(2A) or (2C) (registered scheme) within the period of 21 days from the day the notice under this subsection is given, the audit appointment will be terminated at the end of that period.

(1B) A person is not excused from informing ASIC under subsection (1A) that a conflict of interest situation exists on the ground that the information might tend to incriminate the person or expose the person to a penalty.

(1C) However, if the person is a natural person:
(a) the information; and
(b) the giving of the information;
are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than proceedings for an offence based on the information given being false or misleading.

(1D) If the individual auditor or audit company gives ASIC a notice under paragraph (1A)(d), ASIC must, as soon as practicable after the notice has been received, give a copy of the notice to the audited body.

Conflicts of Interest

Note 1: For conflict of interest situation, see section 324CD.

Note 2: If the audited body is a public company or a registered scheme and the notice under this subsection is not followed up by a notice under subsection 327B(2B) (public company) or 331AAA(2B) (registered scheme) within the period of 21 days from the day the notice under this subsection is given, the audit appointment will be terminated at the end of that period.

(1B) A person is not excused from informing ASIC under subsection (1A) that a
Conflict of interest situation exists on the ground that the information might tend to incriminate the person or expose the person to a penalty.

(1C) However:
(a) the information; and
(b) the giving of the information;
are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than proceedings for an offence based on the information given being false or misleading.

(1D) If ASIC is given a notice under paragraph (1A)(e), ASIC must, as soon as practicable after the notice is received, give a copy of the notice to the audited body.

Conflict of interest situation of which another member of audit firm is aware

(40) Schedule 1, item 95, page 58 (after line 30), before subsection 324CB(4), insert:
Conflict of interest situation of which members are not aware

(41) Schedule 1, item 95, page 59 (after line 13), before subsection 324CB(6), insert:
Defence

(42) Schedule 1, item 95, page 59 (after line 23), before subsection 324CB(7), insert:
Relationship between obligations under this section and other obligations

(43) Schedule 1, item 95, page 59 (after line 31), before subsection 324CC(1), insert:
Contravention by director of audit company

(44) Schedule 1, item 95, page 60 (after line 11), after subsection 324CC(1), insert:
Director of audit company to notify ASIC

(1A) A person (the defendant) contravenes this subsection if:
(a) an audit company is the auditor of an audited body; and
(b) a conflict of interest situation exists in relation to the audited body while the audit company is the auditor of the audited body; and
(c) the defendant is a director of the audit company at a time when the conflict of interest situation exists; and
(d) on a particular day (the start day), the defendant becomes aware of the circumstances referred to in paragraphs (a) and (b); and
(e) at the end of the period of 7 days from the start day:
(i) the conflict of interest situation remains in existence; and
(ii) ASIC has not been informed in writing by the defendant, by another director of the audit company or by the audit company that the conflict of interest situation exists.

Note 1: For conflict of interest situation, see section 324CD.

Note 2: If the audited body is a public company or a registered scheme and the notice under this subsection is not followed up by a notice under subsection 327B(2C) (public company) or 331AAA(2C) (registered scheme) within the period of 21 days from the day the notice under this subsection is given, the audit appointment will be terminated at the end of that period.

(1B) A person is not excused from informing ASIC under subsection (1A) that a conflict of interest situation exists on the ground that the information might tend to incriminate the person or expose the person to a penalty.

(1C) However, if the person is a natural person:
(a) the information; and
(b) the giving of the information;
are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than proceedings for an offence based on the information given being false or misleading.

(1D) If ASIC is given a notice under paragraph (1A)(e), ASIC must, as soon as practicable after the notice is received, give a copy of the notice to the audited body.

Conflict of interest situation of which another director of audit company aware

(45) Schedule 1, item 95, page 60 (after line 31), before subsection 324CC(4), insert:

Conflict of interest situation of which directors of audit company not aware

(46) Schedule 1, item 95, page 61 (after line 15), before subsection 324CC(6), insert:

Defence

(47) Schedule 1, item 95, page 61 (after line 25), before subsection 324CC(7), insert:

Relationship between obligations under this section and other obligations

(48) Schedule 1, item 95, page 63 (after line 18), after subsection 324CE(1), insert:

Individual auditor to notify ASIC

(1A) An individual auditor contravenes this subsection if:

(a) the individual auditor is the auditor of an audited body; and

(b) a relevant item of the table in subsection 324CH(1) applies to a person or entity covered by subsection (5) of this section while the individual auditor is the auditor of the audited body; and

(c) on a particular day (the start day), the individual auditor becomes aware of the circumstances referred to in paragraph (b); and

(d) at the end of the period of 7 days from the start day:

(i) those circumstances remain in existence; and

(ii) the individual auditor has not informed ASIC in writing of those circumstances.

Note: If the audited body is a public company or a registered scheme and the notice under this subsection is not followed up by a notice under subsection 327B(2A) (public company) or 331AAA(2A) (registered scheme) within the period of 21 days from the day the notice under this subsection is given, the audit appointment will be terminated at the end of that period.

(1B) A person is not excused from informing ASIC under subsection (1A) that the circumstances referred to in paragraph (1A)(b) exist on the ground that the information might tend to incriminate the person or expose the person to a penalty.

(1C) However:

(a) the information; and

(b) the giving of the information;

are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than proceedings for an offence based on the information given being false or misleading.

(1D) If the individual auditor gives ASIC a notice under paragraph (1A)(d), ASIC must, as soon as practicable after the notice has been received, give a copy of the notice to the audited body.

Strict liability contravention of specific independence requirements by individual auditor

(49) Schedule 1, item 95, page 64 (after line 19), before subsection 324CE(5), insert:

People and entities covered

(50) Schedule 1, item 95, page 64 (table item 2, cell at column 2), omit the cell, substitute:
a service company or trust acting for, or on behalf of, the firm, or another entity performing a similar function

(51) Schedule 1, item 95, page 65 (table item 7, cell at column 2), omit the cell, substitute:

an entity that the auditor (or a service company or trust acting for, or on behalf of, the individual auditor, or another entity performing a similar function) controls

(52) Schedule 1, item 95, page 65 (table item 8, cell at column 2), omit the cell, substitute:

a body corporate in which the auditor (or a service company or trust acting for, or on behalf of, the individual auditor, or another entity performing a similar function) has a substantial holding

(53) Schedule 1, item 95, page 66 (lines 26 to 29), omit all the words from and including "by the auditor" to the end of paragraph 324CE(7)(d), substitute:

by the auditor, other than:

(i) an arrangement providing for regular payments of a fixed predetermined dollar amount which is not dependent, directly or indirectly, on the revenues, profits or earnings of the auditor; or

(ii) an arrangement providing for regular payments of a dollar amount where the method of calculating the dollar amount is fixed and is not dependent, directly or indirectly, on the revenues, profits or earnings of the auditor; and

(54) Schedule 1, item 95, page 67 (after line 19), after subsection 324CF(1), insert:

Member of audit firm to notify ASIC

(1A) A person (the defendant) contravenes this subsection if:

(a) an audit firm is the auditor of an audited body; and

(b) a relevant item of the table in subsection 324CH(1) applies to a person or entity covered by subsection (5) of this section while the audit firm is the auditor of the audited body; and

(c) the defendant is a member of the audit firm at a time when the circumstances referred to in paragraph (b) exist; and

(d) on a particular day (the start day), the defendant becomes aware of the circumstances referred to in paragraphs (a) and (b); and

(e) at the end of the period of 7 days from the start day:

(i) the circumstances referred to in paragraph (b) remain in existence; and

(ii) ASIC has not been informed in writing of those circumstances by the defendant, by another member of the audit firm or by someone else on behalf of the audit firm.

Note: If the audited body is a public company or a registered scheme and the notice under this subsection is not followed up by a notice under subsection 327B(2B) (public company) or 331AAA(2B) (registered scheme) within the period of 21 days from the day the notice under this subsection is given, the audit appointment will be terminated at the end of that period.

(1B) A person is not excused from informing ASIC under subsection (1A) that the circumstances referred to in paragraph (1A)(b) exist on the ground that the information might tend to incriminate the person or expose the person to a penalty.

(1C) However:

(a) the information; and

(b) the giving of the information;
are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than proceedings for an offence based on the information given being false or misleading.

(1D) If ASIC is given a notice under paragraph (1A)(e), ASIC must, as soon as practicable after the notice is received, give a copy of the notice to the audited body.

Contravention of independence requirements by members of audit firm

(55) Schedule 1, item 95, page 68 (after line 6), before subsection 324CF(5), insert:

People and entities covered

(56) Schedule 1, item 95, page 68 (table item 2, cell at column 2), omit the cell, substitute:

a service company or trust acting for, or on behalf of, the firm, or another entity performing a similar function

(57) Schedule 1, item 95, page 69 (table item 8, cell at column 2), omit the cell, substitute:

An entity that the firm (or a service company or trust acting for, or on behalf of, the firm, or another entity performing a similar function) controls

(58) Schedule 1, item 95, page 69 (table item 9, cell at column 2), omit the cell, substitute:

a body corporate in which the firm (or a service company or trust acting for, or on behalf of, the firm, or another entity performing a similar function) has a substantial holding

(59) Schedule 1, item 95, page 70 (lines 23 to 26), omit all the words from and including “by the firm” to the end of paragraph 324CF(7)(d), substitute:

by the firm, other than:

(i) an arrangement providing for regular payments of a fixed predetermined dollar amount which is not dependent, directly or indirectly, on the revenues, profits or earnings of the firm; or

(ii) an arrangement providing for regular payments of a dollar amount where the method of calculating the dollar amount is fixed and is not dependent, directly or indirectly, on the revenues, profits or earnings of the firm; and

(60) Schedule 1, item 95, page 71 (after line 19), after subsection 324CG(1), insert:

Audit company to notify ASIC

(1A) An audit company contravenes this subsection if:

(a) the audit company is the auditor of an audited body; and

(b) a relevant item of the table in subsection 324CH(1) applies to a person or entity covered by subsection (9) of this section while the audit company is the auditor of the audited body; and

(c) on a particular day (the start day), the audit company becomes aware of the circumstances referred to in paragraph (b); and

(d) at the end of the period of 7 days from the start day:

(i) those circumstances remain in existence; and

(ii) the audit company has not informed ASIC in writing of those circumstances.

Note: If the audited body is a public company or a registered scheme and the notice under this subsection is not followed up by a notice under subsection 327B(2C) (public company) or 331AAA(2C) (registered scheme) within the period of 21 days from the day the notice under this subsection is given, the audit appointment will be terminated at the end of that period.
(1B) If the audit company gives ASIC a notice under paragraph (1A)(d), ASIC must, as soon as practicable after the notice has been received, give a copy of the notice to the audited body.

*Strict liability contravention of specific independence requirements by audit company*

(61) Schedule 1, item 95, page 72 (after line 21), after subsection 324CG(5), insert:

Director of audit company to notify ASIC

(5A) A person (the defendant) contravenes this subsection if:

(a) an audit company is the auditor of an audited body; and

(b) a relevant item of the table in subsection 324CH(1) applies to a person or entity covered by subsection (9) of this section while the audit company is the auditor of the audited body; and

(c) the defendant is a director of the audit company at a time when the circumstances referred to in paragraph (b) exist; and

(d) on a particular day (the start day), the defendant becomes aware of the circumstances referred to in paragraphs (a) and (b); and

(e) at the end of the period of 7 days from the start day:

(i) the circumstances referred to in paragraph (b) remain in existence; and

(ii) ASIC has not been informed in writing of those circumstances by the defendant, by another director of the company or by the audit company.

Note: If the audited body is a public company or a registered scheme and the notice under this subsection is not followed up by a notice under subsection 327B(2C) (public company) or 331AAA(2C) (registered scheme) within the period of 21 days from the day the notice under this subsection is given, the audit appointment will be terminated at the end of that period.

(5B) A person is not excused from informing ASIC under subsection (5A) that the circumstances referred to in paragraph (5A)(b) exist on the ground that the information might tend to incriminate the person or expose the person to a penalty.

(5C) However, if the person is a natural person:

(a) the information; and

(b) the giving of the information;

are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than proceedings for an offence based on the information given being false or misleading.

(5D) If ASIC is given a notice under paragraph (5A)(e), ASIC must, as soon as practicable after the notice is received, give a copy of the notice to the audited body.

*Strict liability contravention of specific independence requirements by director of audit company*

(62) Schedule 1, item 95, page 73 (table item 2, cell at column 2), omit the cell, substitute:

a service company or trust acting for, or on behalf of, the audit company, or another entity performing a similar function

(63) Schedule 1, item 95, page 74 (table item 8, cell at column 2), omit the cell, substitute:

An entity that the audit company (or a service company or trust acting for, or on behalf of, the audit company, or another entity performing a similar function) controls

(64) Schedule 1, item 95, page 74 (table item 9, cell at column 2), omit the cell, substitute:
a body corporate in which the audit company (or a service company or trust acting for, or on behalf of, the audit company, or another entity performing a similar function) has a substantial holding

(65) Schedule 1, item 95, page 75 (lines 31 to 34), omit all the words from and including “audit company” to the end of paragraph 324CG(11)(d), substitute:

audit company, other than:

(i) an arrangement providing for regular payments of a fixed pre-determined dollar amount which is not dependent, directly or indirectly, on the revenues, profits or earnings of the audit company; or

(ii) an arrangement providing for regular payments of a dollar amount where the method of calculating the dollar amount is fixed and is not dependent, directly or indirectly, on the revenues, profits or earnings of the audit company; and

(66) Schedule 1, item 96, page 90 (lines 23 and 24), omit paragraph 327B(2)(d), substitute:

(d) ceases to be auditor under subsection (2A), (2B) or (2C).

(2A) An individual auditor ceases to be auditor of a company under this subsection if:

(a) on a particular day (the start day), the individual auditor:

(i) informs ASIC of a conflict of interest situation in relation to the company under subsection 324CA(1A); or

(ii) informs ASIC of particular circumstances in relation to the company under subsection 324CE(1A); and

(b) the individual auditor does not give ASIC a notice, before the notification day (see subsection (2D)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the remedial period) of 21 days from the start day.

(2B) An audit firm ceases to be auditor of a company under this subsection if:

(a) on a particular day (the start day), ASIC is:

(i) informed of a conflict of interest situation in relation to the company under subsection 324CB(1A); or

(ii) informed of particular circumstances in relation to the company under subsection 324CF(1A); and

(b) ASIC has not been given a notice on behalf of the audit firm, before the notification day (see subsection (2D)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the remedial period) of 21 days from the start day.

(2C) An audit company ceases to be auditor of a company under this subsection if:

(a) on a particular day (the start day), ASIC is:

(i) informed of a conflict of interest situation in relation to the company under subsection 324CB(1A) or 321CC(1A); or

(ii) informed of particular circumstances in relation to the company under subsection 324CF(1A) or 324CG(1A) or (5A); and

(b) ASIC has not been given a notice on behalf of the audit company, before the notification day (see subsection (2D)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the remedial period) of 21 days from the start day.

(2D) The notification day is:
(a) the last day of the remedial period; or

(b) such later day as ASIC approves in writing (whether before or after the remedial period ends).

(67) Schedule 1, item 96, page 90 (lines 27 to 30), omit subsection 327B(4)(4), substitute:

(4) If an audit firm ceases to be the auditor of a company under subsection (2) at a particular time, each member of the firm who:

(a) is taken to have been appointed as an auditor of the company under subsection 324AB(1) or 324AC(4); and

(b) is an auditor of the company immediately before that time;

ceases to be an auditor of the company at that time.

(68) Schedule 1, item 100, page 96 (lines 22 and 23), omit paragraph 331AAA(2)(d), substitute:

(d) ceases to be auditor under subsection (2A), (2B) or (2C).

(2A) An individual auditor ceases to be auditor of a registered scheme under this subsection if:

(a) on a particular day (the start day), the individual auditor:

(i) informs ASIC of a conflict of interest situation in relation to the scheme under subsection 324CA(1A); or

(ii) informs ASIC of particular circumstances in relation to the scheme under subsection 324CE(1A); and

(b) the individual auditor does not give ASIC a notice, before the notification day (see subsection (2D)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the remedial period) of 21 days from the start day.

(2B) An audit firm ceases to be auditor of a registered scheme under this subsection if:

(a) on a particular day (the start day), ASIC is:

(i) informed of a conflict of interest situation in relation to the scheme under subsection 324CB(1A); or

(ii) informed of particular circumstances in relation to the scheme under subsection 324CF(1A); and

(b) ASIC has not been given a notice on behalf of the audit firm, before the notification day (see subsection (2D)), that that conflict of interest situation has, or those circumstances have, ceased to exist before end of the period (the remedial period) of 21 days from the start day.

(2C) An audit company ceases to be auditor of a registered scheme under this subsection if:

(a) on a particular day (the start day), ASIC is:

(i) informed of a conflict of interest situation in relation to the scheme under subsection 324CB(1A) or 324CC(1A); or

(ii) informed of particular circumstances in relation to the scheme under subsection 324CF(1A) or 324CG(1A) or (5A); and

(b) ASIC has not been given a notice on behalf of the audit company, before the notification day (see subsection (2D)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the remedial period) of 21 days from the start day.

(2D) The notification day is:

(a) the last day of the remedial period; or

(b) such later day as ASIC approves in writing (whether before or after the remedial period ends).
(69) Schedule 1, item 100, page 96 (lines 26 to 29), omit subsection 331AAA(4), substitute:

(4) If an audit firm ceases to be the auditor of a registered scheme under subsection (2) at a particular time, each member of the firm who:

(a) is taken to have been appointed as an auditor of the scheme under subsection 324AB(1) or 324AC(4); and

(b) is an auditor of the scheme immediately before that time;

ceases to be an auditor of the scheme at that time.

(70) Schedule 1, item 111, page 101 (table item 116CB, cell at column 2), omit the cell, substitute:

Subsections 324CA(1A) and (2)

(71) Schedule 1, item 111, page 101 (table item 116CF, cell at column 2), omit the cell, substitute:

Subsections 324CB(1A), (2) and (4)

(72) Schedule 1, item 111, page 101 (table item 116DB, cell at column 2), omit the cell, substitute:

Subsections 324CE(1A) and (2)

(73) Schedule 1, item 111, page 101 (table item 116FB, cell at column 2), omit the cell, substitute:

Subsections 324CF(1A) and (2)

(74) Schedule 1, item 111, page 101 (table item 116FD, cell at column 2), omit the cell, substitute:

Subsections 324CG(1A) and (2)

(75) Schedule 1, item 111, page 101 (table item 116FH, cell at column 2), omit the cell, substitute:

Subsections 324CG(5A) and (6)

I understand that these amendments will all require any debate. They are basically technical amendments relating to auditor appointment, independence and rotation requirements.

Senator MURRAY (Western Australia) (12.28 p.m.)—I notice on the running sheet that we are dealing with amendments (24) to (76). We have left out amendment (23), which is fair enough. But the bottom of the running sheet says:

NB Govt (70) to (76) [sheet PK247] above in conflict with Opp (22) ...

I do not know whether Senator Conroy intends to address that later or whether he has changed his mind and is going to agree to amendments (70) to (76).

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that government amendments (24) to (76) be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question is that item 65 of schedule 1 stand as printed.

Question negatived.

Senator Conroy—I seek advice from you, Mr Temporary Chairman. Which item did we just vote on?

The TEMPORARY CHAIRMAN—Item 65 of schedule 1. The noes have it. Has that clarified it?

Senator Conroy—No—which amendment was that?

The TEMPORARY CHAIRMAN—No. 23.

Senator Conroy—We oppose that.

The TEMPORARY CHAIRMAN—That will be in accordance with the government’s wishes as well.

Senator Conroy—So we are putting government amendments at the moment?
The TEMPORARY CHAIRMAN—Correct.

Senator Conroy—So the government is voting against its own amendment?

Senator Ian Campbell—If required, we will come back to it. The noes have it at this stage, but I am happy to recommit it later.

Senator MURRAY—I assume, therefore, that item 65 will be revisited later—amendment No. 23 on sheet PK247.

The TEMPORARY CHAIRMAN (Senator Marshall)—It is government amendment No. 23 on sheet PK247.

Senator MURRAY—That will be revisited?

The TEMPORARY CHAIRMAN—If necessary. If there is still some confusion, we will come back to it.

Senator MURRAY—I move Democrat amendment (1) on sheet 4214 revised:

(1) Schedule 1, item 73, page 36 (line 23), at the end of the definition of audit independence requirements of this Act, add:

“and includes the following specific requirements:

(a) an audit committee is not independent and an auditor is not independent if either is subject to the patronage or direction of a dominant shareholder; and

(b) an auditor is not independent if the auditor provides non-audit services of a kind prohibited in Australia, the European Union, or the United States of America.”

That is what you would describe as a principles based amendment. It does not seek to interfere. Auditors continue to audit with whomever they wish. It just seeks to ensure that they do not misrepresent themselves as being independent when they are not. The amendment says that an audit committee—which, generally speaking, in my experience and understanding, is composed of non-executive directors—is not independent and that an auditor is not independent if either is subject to the patronage or direction of a dominant shareholder.

We have not given a definition of a ‘dominant shareholder’ because there is no penalty attached to this and because it is a matter of judgment. We see this amendment as preventing people passing themselves off as independent when they are not. We say that if, as we were advised, a dominant shareholder is present in 52 per cent of ASX listed companies and dominant shareholders are present in many of the others, and their vested interest, their selfish interest or their personal interest is able to dominate the board and dominate the audit committee—or, indeed, the auditor appointed by the audit committee or by the board—then there is a risk to independence.

The second part of the amendment says that an auditor is not independent if the auditor provides non-audit services of a kind prohibited in Australia, the European Union or the United States of America. The reason we have chosen those is that the European Union and the United States of America have already moved in a different direction from Australia. Regardless of decisions made on CLERP 9 today, and I recognise that some amendments will be moved later which deal with non-audit services, all of the auditors who audit ASX listed companies—certainly the top 300 and possibly the top 500—do have cross-border relationships into the European Union or the United States of America, and we need to find some way in which those conflicts are resolved. We already know that one of our big four has had the American SEC visiting Australia to deal with this very issue. Throughout the process of the committee hearing, the committee discussion and so on, I found people assuming independence, claiming independence, when
under no circumstances was full independence apparent.

In my supplementary remarks to the second part of the committee’s report on this legislation, I dealt at length with the independence issue. I would commend those remarks to all interested observers because I tried to address the really fundamental underpinnings which should lie behind any issue of independence. I made reference to paragraphs 1.23 to 1.30, at pages 6 and 7, of the Joint Committee of Public Accounts and Audit report 391 in my speech on the second reading yesterday. I will repeat the JCPAA remarks today:

... the Committee has explored a number of mechanisms to enhance independence. However, a core set of mechanisms and criteria in each of the following areas, are common to enhancing the independence of each group:

- appointment;
- security of tenure;
- termination; and
- remuneration.

If those are not addressed in a way which guarantees independence, then an auditor—or a director, I might say—is not independent. If directors are subject to the patronage or direction of a dominant shareholder, they cannot claim to be independent. I have devised this as a method of establishing in law a principle: it is not a matter of establishing when you are independent; it is determining when you are not independent. For those reasons I think this would be a useful addition to the law. No penalties are attached, but just do not start describing yourself as independent when you are not.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (12.39 p.m.)—Quite clearly Senator Murray’s amendment is aimed at dealing with the very problem that is dealt with at the core of this bill—that is, enhancing the audit independence requirements and the law surrounding those. If you look at the history of CLERP 9, you will see that it was very much founded in the Ramsay report. Probably my first job when I came back into the portfolio after a three-year sabbatical in communications was to address the Ramsay report, which was in my in-tray. I determined that rather than just respond to that we would broaden the policy reach, create CLERP 9 and look at accountability, accounting oversight and a whole range of other things. This is the core business of CLERP 9. We are bringing in strict new provisions in relation to auditor independence requirements.

The amendment Senator Murray has moved is problematic in that defining ‘patronage’ and ‘dominant shareholder’ is difficult. The dictionary meaning of patronage includes ‘the power to control appointments to office’. Would appointment of the audit committee by the board of directors where the composition of the board is controlled by one or more major shareholders—which is quite often the case, as Senator Murray says—fall within the meaning of patronage of a dominant shareholder? In that case, the proposed amendment would spell trouble for the appointment of audit committees by the boards of many of Australia’s companies. Do the words ‘patronage’ and ‘power’, for example, cover indirect power held by a major shareholder over the board of a company? I suspect Senator Murray would say yes. We have approached the same difficulty with the specific legislative requirement of making a declaration of auditor independence under section 307C, where the auditor must declare that there have been no contraventions of the auditor independence requirements of this act in relation to the audit or the review.

If an auditor were to make that required declaration under the new law and that declaration were false, then that auditor would be
in breach of section 1308(2) of the act which attracts a penalty of $11,000. We have said that saying you are independent when you know you are not is a breach of the law. Further than that, the bill is going to add a requirement that auditors give a report to the regulator—that is, to ASIC, the Australian Securities and Investments Commission—in relation to any matter that, in the opinion of the auditor, constitutes an attempt to unduly influence, coerce, manipulate or mislead the auditor in the conduct of the audit. We are, I think, seeking the same end with what some people would regard as fairly harsh—and some may even say draconian—measures to ensure that auditors have not only a very strong requirement to declare and to make a declaration but also a positive requirement to report to ASIC where there is that coercion or manipulation that Senator Murray quite properly alludes to.

We are strongly opposed to paragraph (b) of the amendment, which would basically require Australian auditors to have reference to the content of overseas legislation, over which the Australian parliament has absolutely no control. It raises very strong issues going to sovereignty and the supremacy of this parliament. At the practical level, this approach raises very difficult problems. There are the questions of amendments to overseas legislation, the granting of relief or exemptions under overseas legislation and different definitions in each of the jurisdictions. We have worked very closely with the major jurisdictions on these issues. It is obviously very important for Australia’s entities that report in the US, for example, that we are given some form of accreditation under the PCAOB’s processes. We have approached the issue, for example, of non-audit services in a way that is different from the way the US does but in a way that is regarded in the US as very robust. I am very confident that, through the cooperation between the FRC, ASIC and the PCAOB and the SEC in the US, our system will deliver the outcome that Senator Murray wants.

Senator CONROY (Victoria) (12.45 p.m.)—While Senator Murray well knows my support of the principles that he is espousing, at this stage we will not be supporting him—for some of the reasons that have been outlined by Senator Ian Campbell but also because we are proposing our own amendments to try and address these issues. But, as always, I welcome the debate and the issues that Senator Murray is pushing. I know that he and I are committed to trying to get this issue resolved and working in a way that is suitable for shareholders and the broader investor community. So, reluctantly, we will not be supporting this amendment. We are hoping to resolve these issues by pursuing our own amendments.

Progress reported.

TAX LAWS AMENDMENT (MEDICARE LEVY AND MEDICARE LEVY SURCHARGE) BILL 2004

Second Reading

Debate resumed from 15 June, on motion by Senator Troeth:

That this bill be now read a second time

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.46 p.m.)—The Tax Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2004 will increase the Medicare levy low-income thresholds for individuals and families in line with increases in the consumer price index. The low-income threshold in the Medicare levy surcharge provisions will similarly be increased. These charges will ensure that low-income individuals and families will continue not to have to pay the Medicare levy or surcharge. I commend the bill to the Senate.
Bill read a second time.

**Third Reading**

Bill passed through its remaining stages without amendment or debate.

**FARM HOUSEHOLD SUPPORT AMENDMENT BILL 2004**

**Second Reading**

Debate resumed from 15 June, on motion by Senator Troeth:

That this bill be now read a second time.

Senator O’BRIEN (Tasmania) (12.47 p.m.)—The opposition will be supporting the passage of the Farm Household Support Amendment Bill 2004. The purpose of the bill is to extend the government’s Farm Help program. The bill extends the program to 30 June 2008. The bill also proposes a number of amendments that will tighten the administration of the Farm Help program. These changes to the administration of the program will shift its emphasis from welfare support to structural adjustment.

The Farm Household Support Amendment Bill 2004 follows the announcement contained in this year’s budget that the program would be extended. The program provides up to 12 months income support at the Newstart allowance rate, a grant for professional advice to assist recipients in making decisions about their future in farming and funding for re-establishment grants to assist people who have no option but to leave farming. The bill also introduces a number of administrative changes to the program that flow from a review of its performance, and a report from the Australian National Audit Office in 2003.

New requirements for income support and re-establishment grants mean that a person will have to undertake financial advice and develop their activity plan prior to receiving income support, except in cases of hardship prior to receiving a re-establishment grant. Farmers are currently required to arrange a financial assessment of their farm businesses within a three-month period. Under the new system, they must undertake the financial assessment of their farm businesses and develop an activity plan before their income support can commence. An approved financial adviser must now assess the farmer’s prospects of getting additional finance.

These changes also provide for this assessment process to be varied for people in severe financial hardship. To qualify for this provision, the liquid assets of a person and their partner at the time of the application must not be greater than the total amount of Newstart allowance that would have been payable in the immediately preceding six weeks. Hardship provision recipients will be provided with income support for a period of up to three months while they undertake their financial assessment and develop their activity plan. Income support will cease if they have not done this within the three-month period. The recipient will then be assessed in order to qualify for the remainder of their income support.

The proposed changes will also enable reviews to be conducted of re-establishment grant recipients to determine whether they are complying with their undertakings not to re-enter farming within a five-year period. There is also a provision to terminate Farm Help income support if a person or their partner is in receipt of an exceptional circumstances relief payment. The government has advised us that this clause is designed to remove the possibility of a person receiving Farm Help income support and the exceptional circumstances relief payment at the same time. The re-establishment grant will also be increased to $50,000, up from the current $45,000. Whilst this is not a magnificent increase, Labor supports these amendments to the program.
Senator STEPHENS (New South Wales) (12.50 p.m.)—I, too, rise to speak briefly to the Farm Household Support Amendment Bill 2004. Senator O’Brien has outlined the purposes of the bill and the main issues. I draw the attention of colleagues to the importance of this bill in supporting rural and regional communities and highlight the fact that we support the package because it does help people to make crucial changes to their situation. The important changes to the bill include the access to legal and business advice and up to 12-months income support for these families. That will provide some respite from the terrible pressures that are currently being experienced by those families.

Once again, I raise the issue of drought, drought affected farmers and farm communities. This bill is part of the government’s AAA package. It is an important suite of measures to support families and farms currently in drought situations. I do not know whether you are aware, Mr Acting Deputy President, but we still have 80 per cent of New South Wales in drought. That is often forgotten by people on the east coast, who are experiencing great showers at the moment. We have a very desperate situation in New South Wales for those families. Drought has taken an extraordinary toll on the emotions and health of farm families. The incorporation in the package of funding for rural financial counsellors will address some of the issues that farming families are experiencing. Counsellors have played an extraordinary role in easing the hardship of those families who are experiencing such an extended drought period.

I have spoken previously of the report produced earlier this year by Professor Margaret Alston and Jenny Kent from the Centre for Rural Social Research at Charles Sturt University. They released their study into the social impacts of drought, and their report highlights the often forgotten social impacts and emphasises that these extend far beyond the farm gate. As part of their research into the New South Wales communities of Bourke, Condobolin and Deniliquin, members of farm families, small business owners, service providers and other key members were interviewed. Focus groups were also conducted. These consultations revealed the significant stress that is being caused by this one in 100 year drought. We know there have been many economic analyses of drought impacts. But what is so important about this report is its groundbreaking findings that social impacts of the drought extend, as I say, far beyond the farm gate. They include things like the serious erosion of income for farms and small businesses in regional communities, an extraordinary increase in rural poverty, increasing workloads—both on and off farms—the need to seek alternative income, pressures on health and welfare services, lack of access to services in regional communities and declining educational access. There are very specific issues for different groups of people, including young people and ageing people in those communities.

But what comes across loud and clear in the findings of the report is the increase in stress, depression and isolation that people are feeling. Many farming families are strained to near breaking point. In each interview the emotional impacts of the drought were clearly evident. They all noted the demoralising impact on themselves or their families and their communities resulting from the consequences of the drought. The men interviewed talked about their links to the land, the stock and the distress caused by watching both the land and their stock suffer. The women interviewed talked about the emotional impacts of having no income—the struggle to support their families and to keep their children in school and the sheer energy-sapping efforts associated with their roles.
Children were also interviewed—some as young as nine and 10—and they provided extraordinary insights into the pressures on them to perform as little adults, taking on the responsibility of making up for the lack of hands on the farm. Many children found that their education was suffering because their work on the farms interfered with their homework and their concentration at school. You can see that these people are living under enormous strain. I would commend any measure that provides them with some specialist legal and business information to help them get back on track with their farm or, if necessary, to move on to another, hopefully, better life.

I ask that the government also consider extending rural financial counselling services to incorporate access to social services as recommended in Professor Alston's report. The increased incidence of depression, stress and, very sadly, suicide rates among farmers needs to be addressed immediately. The report, when dealing specifically with rural financial counselling services, states:

The Rural Financial Counselling services are appropriate and accessible for financial counselling but are stretched. These workers also find themselves called on for social and emotional counselling, tasks for which they are inadequately trained. Rural Financial Counselling services have proved to be excellent rural service models and should be funded for ongoing service provision. However there is an urgent need to expand these services with social work services.

Rural financial counselling services are incredibly important to communities most affected by drought. The process to apply for the available government support is very complicated, and most people interviewed did not feel capable of applying without the assistance of their local counsellors. During the time of the research for this report the Deniliquin counselling service, for example, had seen a massive increase in the demand for their services. A normal three-month period for a full-time counsellor would usually include 35 clients. In the three months prior to the researcher's visit, the counsellor had in fact seen 135 clients. The demand is high and the pressure is intense. These people are much needed and valued members of farming communities. One farmer interviewed, said:

I've known—
the rural counsellor—
for a long time. But you can come down here when you are a bit depressed, come down and have a couple of beers with and a yack. You always go home sort of sparked up again. And she's as good as a counsellor and a neighbour and everything else.

The rural financial counsellors provide help with form filling and with applications for assistance. They do home visits and help run the farm family gatherings. It has been feared, particularly by the Condobolin community that, when the drought finally breaks, it will see the loss of these positions, despite the need felt in the community to continue funding them through a recovery period. Farming people need to be reassured that they will not be abandoned the moment the government declares that the drought is over.

I have been disappointed to hear that the government has not really valued the vital work of the Rural Financial Counselling Service. I have received numerous letters and phone calls from this service prior to the budget, desperately seeking some assurance that funding for the program would be continued. But, in fact, the rural counsellors were left in suspense about whether their funding would continue and whether they would have jobs until a few weeks before their contracts were to end. I think this showed great insensitivity to what is really happening in rural communities.
So the government actually waited until the May budget to announce the continuation of the program. I commend the continuation of the program; it is very important. We had had a series of pre-budget announcements, and this should have been one of them—$5 million to fund 85 services supporting around 9,000 families would surely have been better value than a nearly $6 million advertising campaign.

I will finish my remarks by honouring the work of all those involved in contributing to the long-term sustainability of their regional communities. The survival of our bush and farming heritage depends on those people committed enough to stand by each other and get though this traumatic period. They deserve our respect and our support. They deserve genuine partnerships with government to ensure that regional Australia has a viable future.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.00 p.m.)—in reply—Before I make some comments on the Farm Household Support Amendment Bill 2004 I would like to correct some incorrect statements and clarify some inconsistencies made by the opposition in their remarks.

Firstly, Senator O’Brien incorrectly stated that the amendment is to ensure that farmers cannot receive exceptional circumstances and Farm Help payments at the same time. There is provision in the Farm Household Support Amendment Bill 2004 to end the opportunity for a person or their partner to suspend their Farm Help income support to access exceptional circumstances relief payments and then return to Farm Help income support. This reflects the adjustment focus of Farm Help. The amendments to the objects of Farm Help income support state that income support is provided to farm families while they take action to improve their long-term financial situation by improving the financial performance of their farm enterprise, to find alternative sources of income or to re-establish themselves outside farming.

This object encourages a continuous process of considering options and decision making. It gives farm families the best opportunity to fulfil their own stated goals that they have made in their activity plan and achieve improved financial security. The new provision to stop suspension of Farm Help will ensure that farmers have a continuous period on the program. It aims to maximise the adjustment benefits of the program. A person or their partner is still able to apply for exceptional circumstances relief payments after their completion of the Farm Help program. This provision will not be retrospective beyond the commencement of schedule 2 of the Farm Household Support Amendment Bill 2004. It will apply to people who apply for Farm Help after the commencement of these amendments.

I also want to comment on Senator Stephens’s comments regarding rural financial counselling. Rural financial counselling is provided through the Department of Agriculture, Fisheries and Forestry and supports—in conjunction with state governments and community based management committees—61 services and over 80 counsellors. In addition to that purely financial service, which is provided to supply farmers with financial assistance, there is social adjustment counselling provided through the Department of Family and Community Services—and indeed community programs such as Lifeline. Farmers have immediate access to these programs if they need additional counselling beyond financial counselling.

In addition, I would like to point out to Senator Stephens that the government will
not be determining when the drought stops; obviously climatic conditions will determine when the drought stops. Until climatic conditions prove that the drought has stopped, government support for farmers suffering the effects of drought will be ongoing. Our program is a needs based program. There is always an opportunity to apply for exceptional circumstances and other forms of income support, and that support will be ongoing.

Senator Stephens should also be well aware that on budget night I faxed confirmation of a four-year program of funding to every Rural Financial Counselling Service in Australia. So those services knew on budget night that they had an additional four years of funding to ensure the continuity of their services. They have all been funded with rollover funding until June 2005. During the next 12 months an assessment will be made of the services that will be provided after that time until June 2008.

I turn now to the bill. This amendment bill will give effect to our 2004 budget commitment to extend the Farm Help program until 30 June 2008. In the 2004-05 budget $134.9 million over four years is allocated to the Farm Help program. It will deliver improvements to the program to support the adjustment of families on farms in severe financial difficulties, it will strengthen mutual obligation and it will assist them in their decision making.

The changes to the disallowable instruments established under the Farm Household Support Act 1992 are currently being drafted to implement the program enhancements. These cannot take legal effect until the relevant amendments in the Farm Household Support Amendment Bill 2004 are in force. The instrument is to be amended to specify the operational details of the Farm Help advice and training grant. The re-establishment grant 1997 instrument is to be amended to extend the closing date for applications for the re-establishment grant to 30 June 2007 and to increase the maximum re-establishment grant to $50,000. The dairy type grant has also been increased to $50,000. A regulation is currently being developed to detail who can provide financial assessments under the program.

The Farm Help program provides a proven, effective safety net for farm families facing severe financial difficulties. It helps Australian farmers to build their capacity to manage risk, to adopt new practices and to improve strategic planning and decision making. I appreciate the bipartisan support that the Farm Help program receives and the recognition of the valuable role that this program plays in many rural communities. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

EXPORT MARKET DEVELOPMENT GRANTS AMENDMENT BILL 2004

Second Reading

Debate resumed from 15 June, on motion by Senator Troeth:

That this bill be now read a second time.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.07 p.m.)—The federal government commits $154.4 million each year to assist thousands of Australian businesses to develop sustainable export markets through the Export Market Development Grants Scheme. The coalition does not believe that these EMDG funds should be paid to persons who may be viewed by the Australian community as being inappropriate to represent and promote the public interest of Australia in relation to
trade overseas. This bill will ensure that grants are not payable where the applicant or the applicant’s associates are deemed by Austrade to be not fit and proper persons to receive a grant according to ministerial guidelines. The proposed changes are to take effect for EMDG claims from the 2003-04 grant year—that is, for applications received and grants paid from 1 July 2004 onwards. This bill will ensure that EMDG funding is not provided to individuals or businesses that do not merit government recognition or taxpayer support. The funding, however, remains focused, as always, on assisting small and medium businesses to build sustainable export markets. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

MEDICAL INDEMNITY (RUN-OFF COVER SUPPORT PAYMENT) BILL 2004

MEDICAL INDEMNITY LEGISLATION AMENDMENT (RUN-OFF COVER INDEMNITY AND OTHER MEASURES) BILL 2004

Second Reading

Debate resumed from 15 June, on motion by Senator Troeth:

That these bills be now read a second time.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.09 p.m.)—This legislation represents the final elements of the government’s medical indemnity package. The Run-off Cover Scheme is an important measure for both doctors and patients and will come into effect from 1 July 2004. It will provide security to practising doctors by ensuring that they will have access to indemnity cover on their retirement, without any need to pay any further premiums once they retire and that the cost of any claims which may arise will be guaranteed to be paid by the government. Patients can also feel reassured that their claims can be paid, even if the doctor has retired. This is a good outcome for doctors; this is a good outcome for patients. I commend these bills to the Senate.

Question agreed to.

Bills read a second time.

Third Reading

Bills passed through their remaining stages without amendment or debate.

ELECTORAL AND REFERENDUM AMENDMENT (ACCESS TO ELECTORAL ROLL AND OTHER MEASURES) BILL 2004

Second Reading

Debate resumed from 15 June, on motion by Senator Troeth:

That this bill be now read a second time.

Senator MURRAY (Western Australia) (1.11 p.m.)—The Electoral and Referendum Amendment (Access to Electoral Roll and Other Measures) Bill 2004 seeks to amend the Commonwealth Electoral Act 1918. I rise today to speak as the Australian Democrats spokesperson on electoral matters. The access bill amends the Commonwealth Electoral Act and the Referendum (Machinery Provisions) Act. Many of the amendments are technical and are directed at eliminating discrepancies between the Electoral Act and the referendum act. We happily support the passage of the bill and have no problem with most of the provisions, but there are a couple on which I should make remarks.

One provision of concern is with the broadcasting of political material at polling booths. Currently the Electoral Act prohibits numerous activities at the entrance to or
within a polling booth or within six metres of a polling booth or polling booth entrance. That measure is designed to ensure good order and good conduct. Prohibited activities include canvassing for votes, soliciting the vote of any elector, inducing any elector not to vote for a particular candidate, inducing any elector not to vote at the election or exhibiting any notice or sign relating to the election.

The provisions in this bill seek to add to that list of prohibitions to include circumstances where a person engages in any of those activities more than six metres from polling booths but by means of various specified public address systems, radio equipment or a device for broadcasting and where the activity is audible within the polling booth or within six metres of the polling booth. There could be potential problems with this proposed provision, as has been highlighted in the Bills Digest, and it might be necessary for the AEC to produce clarifying material on the matter. The main issue arises because of the inclusion of radio equipment or broadcasting devices in the provision. If a radio station broadcasts a political advertisement on the day of the election and a person has a radio turned on inside or within earshot of a polling booth, does the radio station breach this section? The digest is of the opinion that, as presently drafted, it might seem so. The person authorising the advertisement and perhaps the radio station itself might be technically liable to the penalty provided for under the provision. I am sure it is not the intention of the government that that be so, but the AEC should clarify that matter.

I want to take this opportunity to express, as well, the fact that I regret that the opportunities to amend the Electoral Act are so few and far between. This is despite numerous recommendations that flow on from the excellent work done not only by the Joint Standing Committee on Electoral Matters, of which I am a member, but also by the Australian Electoral Commission. The government has had many opportunities to raise these matters in the form of legislation over many sitting weeks instead of pushing this bill through to us and having another one hanging around on the eve of a looming election. The government has lacked initiative in this area, and we see piecemeal legislation coming very late in the electoral cycle. We urge the next government in the next parliamentary cycle to adopt a more coherent policy on introducing electoral law reform to allow the Senate to regularly debate these issues.

The last issue I want to raise with reference to this bill is the question of the electoral roll. The bill seeks to amend the Electoral Act to provide that the Commonwealth electoral roll is no longer available for sale in any format. The amendment arises from the June 2003 report, The 2001 federal election, by the parliament’s Joint Standing Committee on Electoral Matters. In evidence to the committee, the Australian Electoral Commission had noted an earlier conclusion by the Commonwealth Auditor-General that ‘there is a risk that commercial use of information provided by citizens to meet their electoral responsibilities could bring the electoral administration into disrepute with electors, and that citizens might not enrol in order to protect their privacy’.

The AEC proposed, and the committee unanimously agreed—and I remind the Senate that there are four parties represented on that committee—that the electoral roll should no longer be available for sale in any format, given the ease with which modern technology can be used to extract electors’ information on a purchased copy of the roll for commercial purposes. The government has supported this recommendation, in addition to the committee’s recommendations that roll
information continue to be publicly available in the following forms: first, that printed copies of the roll be available for inspection at AEC offices; second, that public access to the roll in AEC offices be provided by a regularly updated electronic list of all names and addresses of electors enrolled for the relevant electorate, with the provision of all other electorate rolls at particular AEC offices such as the state head office; and third, that an Internet inquiry facility be provided whereby electors can verify their own enrolment details and as much of the detail of any elector’s enrolment as the inquirer is able to provide.

While an inability to purchase a copy of the roll—or a commercial database based on the roll—may impose some administrative and marketing inconvenience on for profit organisations, not for profit organisations and charities, I can assure the Senate, as a member of the committee, that evidence to us indicates that the use of roll information for direct mail and telemarketing generates considerable public anger. The community’s clear expectation is that information which electors are compelled to provide to the AEC will not be used by non-government organisations to—as they see it—in invade their privacy. In addition, there are enrolment considerations. It is hard enough to get many Australians to enrol as it is, and we agree with the committee that they do not need a disincentive such as having their names and details used by for profit, not for profit and charitable organisations, which undoubtedly many people would rather did not happen. We understand, of course, organisations’ concerns and are not unsympathetic to the problems they find themselves now having. However, we believe the competing interests of the public at large should be heeded by us, and the Australian Democrats will therefore support the provisions in the bill and support the bill as a whole.

Senator O’BRIEN (Tasmania) (1.17 p.m.)—Senator Faulkner would normally speak to this legislation on behalf of the opposition, but if I can put some matters on the record for the opposition, that will suffice, I think. The Electoral and Referendum Amendment (Access to Electoral Roll and Other Measures) Bill 2004, which I shall call the access bill for ease of reference, is relatively uncontroversial, dealing essentially with technical reforms to the Commonwealth Electoral Act. Labor will be supporting all the measures in the access bill. However, the Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004, which I will call the enrolment bill, is much more controversial. It was originally to be dealt with at the same time as this bill but will now be dealt with later. That bill, the enrolment bill, provides for the disenfranchising of many young Australians by closing the electoral roll as soon as an election is called, a bureaucratic and unmanageable electoral enrolment regime which will confuse people and will not deter fraud, the hiding of many political donations by raising the disclosure threshold for political donations from $1,500 to $3,000, the complete removal of voting rights for prisoners and a number of other measures which will make it harder for disadvantaged people to exercise their democratic right to vote.

The opposition will be opposing those measures in due course. We note the comments by Senator Murray in relation to some aspects of this bill which are less clear than they should be. However, we will be supporting what are the essentially uncontroversial electoral matters in the bill that is currently before the Senate.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.19 p.m.)—in reply—I thank honourable senators for their contribution to the debate and
for their support of the Electoral and Referendum Amendment (Access to Electoral Roll and Other Measures) Bill 2004. I would also like to thank the chairman and the members of the Joint Standing Committee on Electoral Matters on the committee’s comprehensive report on the 2001 federal election. This bill gives effect to a number of the committee’s recommendations. With this bill and the Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004, the government remains committed to improving the robustness of the electoral process and the integrity of the Commonwealth Electoral Act. Measures relating to the electoral roll will improve clarity of who has access to the roll and the information that can be provided to those entitled to the roll. Public access to the electoral roll will be improved. A copy of the most up-to-date version of the roll will be available for inspection at all offices of the Australian Electoral Commission.

The bill will also enable the Australian Electoral Commission to keep pace with the latest technology and improve access to the roll in new and more accessible forms, such as via the Internet. Removal of the electoral roll from sale will close a loophole and ensure that it is not used for unintended purposes, including for commercial use. The extension of end use restrictions to all forms of the roll should increase the community’s confidence that the information on the roll can be used only for the purposes permitted under the Commonwealth Electoral Act.

The other measures in the bill will enhance arrangements for the lead-up to, and operation of, polling on election day and include clarification of nomination procedures, allowing sitting independent members and senators to nominate with one signature rather than 50, allowing scrutineers to be present at pre-poll voting centres, prohibiting broadcasting of political material that is audible within close proximity of polling places and allowing the temporary suspension of polling under certain circumstances. These measures will improve the operation of the electoral process, and I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

AGRICULTURAL AND VETERINARY CHEMICALS LEGISLATION AMENDMENT (NAME CHANGE) BILL 2004

Second Reading

Debate resumed from 13 May, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator O’BRIEN (Tasmania) (1.22 p.m.)—The Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Bill 2004 changes the name of the National Registration Authority for Agricultural and Veterinary Chemicals, known as the NRA, to the Australian Pesticides and Veterinary Medicines Authority, which will become known as the APVMA. The NRA is currently the authority responsible for the national system of registration and approvals of agricultural and veterinary chemicals. The government has stated that the present title of the organisation does not adequately reflect its purpose and that the use of the acronym NRA to refer to the authority has caused some confusion apparently in the United States where it is confused with the National Rifle Association. It is also apparently inconsistent with current practice within the OECD.

The bill also amends the Agricultural and Veterinary Chemical Code Act 1995 to protect the name and logo of the organisation.
The current national registration system for agricultural and veterinary chemicals is one of the many achievements of the Hawke Labor government. In 1993 the National Registration Authority for Agricultural and Veterinary Chemicals was formally established. The ability of previous Labor agriculture ministers Kerin and Crean to work through rather complex legal and technical issues with state coalition and Labor governments at that time really does stand in stark contrast with the failure of the current Minister for Agriculture, Fisheries and Forestry in that regard. I understand that the amendments in this bill are not expected to have any financial impact on the Commonwealth budget. The NRA has provided for the amendments to its letterhead and web site, and the industry is not obliged to carry out a label change to accommodate the new symbols and name.

The Australian Pesticides and Veterinary Medicines Authority has an important role in evaluating the performance and safety of chemicals used on farm and elsewhere and in protecting the health and safety of farmers, farm workers and, indeed, all who come into contact with agricultural and veterinary chemicals. It has, therefore, an important role not just in protecting those who work with the chemicals but also our environment and, in addition, protecting our food supply from contamination. Australian consumers have become increasingly concerned about contamination of food products and are now very keen to consume food that, as they perceive it, is clean, free from undue contamination, and green—that is, produced in an environmental circumstance that is not the subject of undue or unnecessary pollution. They certainly do not want increasing levels of pesticides in their food. This authority plays an extremely important role in that regard in monitoring the food chain.

The opposition commends the staff of the authority for the important role they play in this organisation. It is a very difficult and complex task. In the future we are going to have significant debates about the role of chemicals and residues in agricultural products. There is certainly a debate in the community at the moment about food safety, and this organisation will be very important in assuring consumers in the future about chemical residues in food products. Labor is happy to support this legislation in the circumstances.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.26 p.m.)—The Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Bill 2004 is a very simple bill containing two basic and uncomplicated measures. It changes the name of the National Registration Authority to the Australian Pesticides and Veterinary Medicines Authority and it protects the new name, the initials and the symbol of the new organisation from misuse. They reflect common terminology within the international community and I believe will help foster greater awareness of the new organisation and its objective of safe and responsible chemical use by all users and manufacturers. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

BANKRUPTCY (ESTATE CHARGES) AMENDMENT BILL 2004

BANKRUPTCY LEGISLATION AMENDMENT BILL 2004

Second Reading

Debate resumed from 13 May and 15 May respectively on motions by Senators Ian Campbell and Troeth:
That these bills be now read a second time.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.28 p.m.)—The Bankruptcy Legislation Amendment Bill 2004 and the Bankruptcy (Estate Charges) Amendment Bill 2004 will make important changes to part X of the Bankruptcy Act 1966. Part X arrangements provide a formal alternative to bankruptcy, allowing debtors to come to binding arrangements with creditors for payment or settlement of outstanding debts. The improvements to be made by these bills will increase confidence in part X arrangements and ensure that part X arrangements continue to have an important place in Australia’s personal insolvency system.

The reforms generally have three objectives: to increase the disclosure requirements of debtors, creditors and trustees involved in part X arrangements; to simplify the process by replacing the three current types of arrangements with a single form of arrangement to be called a ‘personal insolvency agreement’; and to provide a simpler and more consistent process for setting aside and terminating part X arrangements. Many of the issues which may undermine the integrity of part X can also arise in relation to post-bankruptcy schemes of arrangement and compositions under division 6 of part IV of the act. Therefore, the bill also includes amendments to those provisions particularly in relation to the disclosure obligations of debtors, creditors and trustees. The bill will also make some minor and technical amendments to improve the operation of the Bankruptcy Act and correct a drafting error in the transitional provisions contained in the Bankruptcy Legislation Amendment Act 2002. I commend the bill to the Senate.

Question agreed to.

Bills read a second time.

Third Reading

Bills passed through their remaining stages without amendment or debate.

Sitting suspended from 1.30 p.m. to 2.00 p.m.

QUESTIONS WITHOUT NOTICE

Iraq: Treatment of Prisoners

Senator FAULKNER (2.00 p.m.)—My question is directed to Senator Hill, Minister for Defence and Leader of the Government in the Senate. Does the leader of the government recall the Prime Minister telling the Australian people on 1 June that he had instructed his defence minister to make:

... a detailed statement to the Senate when it meets again about the chain of events, the knowledge of and involvement in and communication with the ICRC, the CPA, communications back to Australia and the timelines involved in all of that. Why then did the minister so conspicuously fail to meet the Prime Minister’s commitment—by his refusal yesterday to detail the chain of events and Australian knowledge of involvement in or communication with the Red Cross or the CPA and certainly by giving no time line for who in Defence knew of which specific concerns?

Senator HILL—This is really getting rather ridiculous. We have had four full days of estimates on this issue so far, two with Defence and then two with Foreign Affairs and Trade. Mr Rudd, the shadow spokesman, has been out this morning saying, ‘Foreign affairs cannot clear itself of this.’ He failed to appreciate that foreign affairs appeared for two days before the Senate estimates committee on these issues. We have had four full days of questioning so far. We are going to start again this afternoon and go into tonight, so that will be five full days of questioning.

Senator Robert Ray—That is because you wanted to go to Singapore; be fair!
Senator HILL—I am not quarrelling with five full days of questioning if that is what the Labor Party wants to do, if that is the Labor Party’s priority. We have not had a question on the estimates yet. There have been four full days so far and another full day starting later today. There has not yet been a question on the estimates. All the questions have been on the subject matter that Senator Faulkner is talking about today. In addition to that we have had questions in this place, questions to the Prime Minister and yesterday I put down the statement with three detailed attachments, I referred to all references of these issues back to Australia and gave a full list of every ADF person who had been embedded within the coalition authority, the joint command or other multilateral bodies within Iraq.

Everything the Prime Minister said, everything the Labor Party has asked for has been delivered in spades. Yet the Labor Party is still determined to somehow find a connection between those abuses and the ADF. That is what it amounts to. The shadow spokesman for Defence, Senator Evans, went on the ABC and in effect said, ‘We know it is there; it’s just a matter of finding it.’ Now that it has become a bit more politically complicated they have twisted and turned and are now saying that they are not actually accusing the ADF of anything. If the ADF have not acted improperly in Iraq, what is there to be reported back that indicates improper conduct?

They talk about the ICRC report—the Red Cross report; it was not delivered to Australia. The working paper was not delivered to Australia. We still cannot get it from the Red Cross. Why? Because it was not directed to Australia; it was directed to the occupying powers and to the coalition authority, not to Australia. They talk about an Amnesty International report. It was made public in July of last year. How many questions did we get from the Labor Party in the second half of last year or the first part of this year on the subject? What was the interest of the Labor Party? Was the Labor Party saying, ‘What is the Howard government doing about this Amnesty report?’ Since then we have heard about the Human Rights Watch report. How many questions were there from the Labor Party on that? There were none.

Then we hear about the ICRC report of February. How many questions were asked about that? We all know now that the United States was investigating abuses from January. We know that because it went on to CNN. In the first session of this parliament how many questions were there from the Labor Party on what Australia knew about these issues or what representations Australia had made? Of course, there were none. Why? Because they were allegations against American servicemen. Australians did not run the prisons. Australians did not interrogate prisoners. Australians did not have that job to do in Iraq. The targeting was against Americans who had abused prisoners. And that is what it all amounts to. (Time expired)

Senator FAULKNER—Mr President, I ask a supplementary question. Given that outrageous answer, the minister can perhaps confirm to the Senate that it actually took opposition senators less than 48 hours to uncover all the facts that are currently on the public record about what government agencies knew about prisoner abuse and when they knew it. It was a result of opposition questioning. Why then, Minister, at least eight months after Australian officials knew of abuses in Abu Ghraib is the defence minister still not able to comprehensively correct the public record and honour the Prime Minister’s commitment for a full detailed statement to the Senate at the first available opportunity? Why have you still not, after eight months, fronted up and answered these important questions?
Senator HILL—Mr President, nobody knew of the allegations of criminal abuse until January. When the allegations were made to the United States, the US commenced an investigation. It made public the fact that it was conducting that investigation, and it led to prosecutions for criminal abuse. Perhaps that is why questions were not being asked on that. What I can confirm is that there was no interest in this subject from the Australian Labor Party until, of course, the photos were published at the beginning of May, because that was the first time that people became aware that these abuses actually had occurred—not just allegations that were being investigated in January. In May we all knew. The whole world knew that abuses had occurred, and then finally there was an interest in the subject matter and a determination by the Labor Party to find a connection with the ADF. They have not found that connection, because Australians did not detain and did not interrogate the prisoners. (Time expired)

Indigenous Affairs: Funding

Senator SCULLION (2.08 p.m.)—My question is addressed to the Minister for Immigration and Multicultural and Indigenous Affairs, Senator Vanstone. Will the minister inform the Senate of how the government is working to ensure that all Indigenous Australians receive value for money from government spending? Is the minister aware of any alternative policies?

Senator VANSTONE—I thank Senator Scullion for the question. As one of the senators representing the Northern Territory—which has a high proportion of Indigenous Australians in its population—he, along with many others, understands the situation facing Indigenous Australians, especially in regional and remote areas. One of the most important tasks that any government can have is to reduce the disadvantage of the most disadvantaged Australians—namely, Indigenous Australians. This government will spend $2.9 billion in 2004-05 on Indigenous specific programs—39 per cent more than Labor did. That bears repeating: 39 per cent more than Labor did. We are getting results, but we want better results. Indigenous Australians want better value for money.

No-one who has asked the question ‘Is what is happening now the very best Australia can do for Indigenous Australians?’ could possibly answer yes. Surely we need to change our ways. We want more of the money to hit the ground and we want local communities to have a real say in how the money is spent. We want to stop government departments working in an unconnected way. We want to remove layers of bureaucracy that stand between Indigenous Australians on the ground and government. We want to get rid of the rorters. We want state and territory governments to do their bit, rather than have the focus simply on what can come from the Australian government. The states must be responsible to ensure that all communities have fresh water—as everyone here turns on the tap and gets fresh water—and that communities have appropriate policing so that they are as safe as the people in this chamber. Health and education are basic services that all Australians should expect from their state governments and not be denied simply because they are Indigenous Australians.

It appears all Labor wants to do is play politics. On the one hand we have Mr Latham saying that he supports the abolition of ATSIC, but when it comes to the crunch he cannot bring his party to deliver. On 30 March Mr Latham said:

ATSIC is no longer capable of addressing endemic problems in Indigenous communities. It has lost the confidence of much of its own constituency and the wider community.
Only weeks later Labor decided to delay the government’s bill to scrap ATSIC, by referring it to a Senate committee. That speaks loudly of Mr Latham’s ability as the nation’s alternative leader to get his agenda through. It will mean that taxpayers will be forced to cop a $52,000 a week bill just to cover the salary package cost of commissioners who will not in fact have very much to do. In total, the board costs $120,000 a week now, plus the ATSIC support staff that we will now have to provide at about $50,000 a week, so that is about $170,000 a week to delay. That could buy you an Indigenous house every week. This approach will cost more money.

We will do everything we can to make sure that that cost is cut right back, but it is an indication of what Labor is prepared to sacrifice. We are pushing ahead anyway. Programs and staff will go to the new departments on 1 July. Indigenous coordination centres will be established, and a new and better way of doing business on the ground with regional communities—with Indigenous people directly—will come into being. The ministerial task force on Indigenous affairs met for the first time yesterday—10 ministers sitting down talking about nothing but Indigenous affairs, getting better service delivery to individual communities and listening to what communities want. The other side of this chamber might be interested in arguing about who gets a job as a spokesperson, dividing up the spoils and who is going to get paid. There might be some interest in that. As I said here weeks ago, my task is to ensure better service delivery on the ground. The focus we will have with Indigenous Australians is not ‘What do you want tomorrow? What do you want next week?’ but ‘Where do you want your children to be in 10, 20 or 30 years time? Where do you want to take this community? What can we as the Australian government do with you to get your community there? What will you do in return?’

Mr President, I ask a supplementary question. I thank the minister for informing the Senate about how we are going to give better value for the dollar in the delivery of our programs to Indigenous Australians. Could you further inform the Senate on the undertakings of the ministerial task force and your communications with Indigenous people?

Senator SCULLION—I thank Senator Scullion for the question. Yes, I can. The task force that met yesterday was probably one of the very few occasions—if not the first occasion—when such a large group of the heads of departments and ministers have focused on nothing but Indigenous affairs, getting better service delivery to individual communities and listening to what communities want. The other side of this chamber might be interested in arguing about who gets a job as a spokesperson, dividing up the spoils and who is going to get paid. There might be some interest in that. As I said here weeks ago, my task is to ensure better service delivery on the ground. The focus we will have with Indigenous Australians is not ‘What do you want tomorrow? What do you want next week?’ but ‘Where do you want your children to be in 10, 20 or 30 years time? Where do you want to take this community? What can we as the Australian government do with you to get your community there? What will you do in return?’

Iraq: Treatment of Prisoners

Senator COOK—My question is addressed to Senator Hill, Minister for Defence. I draw the minister’s attention to the answers to estimates questions on notice tabled last night and I specifically refer to the series of questions relayed from the minister’s office to Defence on 11 May asking for...
‘advice about prisons, prisoners, the ADF role in detention and what, if any, obligations Australia had’. Aren’t these issues amongst those that neither the minister nor Defence officials were able to clearly answer when questioned in the estimates committee two weeks ago? Can the minister now, five weeks after requesting such advice, inform the Senate precisely what, if any, obligations Australia has and what authorisation was given for the ADF role in detention, including the capturing of Iraqi prisoners of war?

**Senator HILL**—As I have said, we have been answering these questions at length. I started asking questions after 11 May because obviously that was when the photos of gross and criminal abuses came out in the press. Whilst I could not see any connection with Australia because I knew we did not run the prisons and I did not believe we were involved in any of the interrogations, I nevertheless believed I should specifically ask those questions in case there was something that had not been drawn to my attention.

I am pleased to say that the detailed investigation has clearly shown not only those facts but also that there was no improper behaviour by any Defence official. Furthermore, it would seem that certain ADF personnel, lawyers in particular, acted positively and constructively towards improving the conditions for prisoners in Iraq. They facilitated meetings between the joint command and the International Committee of the Red Cross and they facilitated meetings between the Red Cross and the Coalition Provisional Authority, particularly in the delivery of the February report. Out of that investigation, I was pleased to find the constructive and positive contribution that ADF personnel had made.

Australia’s obligations are set out in the conventions. I have been asked questions on that for the last two days—first by Senator Faulkner and repeated by Senator Evans the following day—and I said our obligations are set out in the third and fourth Geneva conventions as they relate to prisoners of war and civilian detainees. We accept an overall obligation that if there is the detention of a party that does not fit within either of the conventions, then that party should nevertheless be treated humanely. That is the obligation of Australia; that is the obligation we accept.

**Senator COOK**—Mr President, I ask a supplementary question. It is on the question of obligations. Does the minister acknowledge any obligations at all on the part of the Australian government towards detainees in Iraq—obligations arising from Australia’s participation in the invasion of Iraq, from our membership of the coalition of the willing or from our strong support of US actions in Iraq? What specific obligations do we acknowledge?

**Senator HILL**—There is no legal obligation on Australia because it is not the detaining party. As I said, it did not run the prisons and it did not interrogate the prisoners. I would like to think that the whole international community accepts responsibility. I have said in the past that Australia accepted responsibility to contribute towards the stabilisation of Iraq, the rebuilding of Iraq and the transfer to an Iraqi government. Out of that it can be argued that includes the proper treatment of those who might be detained during that period or those who are under the detention of authorities during that period. But that is part of what I would see as an international moral obligation. I do not believe it is a legal obligation.

**Family Services: Carers**

**Senator KNOWLES** (2.19 p.m.)—Mr President, my question is to the Minister for Family and Community Services, Senator Patterson. Will the minister please inform the
Senator of how the Howard government is recognising and assisting carers within the community? Can the minister also inform the Senate of any other options for these immensely valuable people in our society?

Senator PATTERSON—I thank Senator Knowles for her question. I know she has taken a very keen interest in this area during the time she has been a senator. The Howard government recognises the vital role that carers play in our society. They are the unsung heroes and heroines of our community who selflessly look after people, whether they are children with a disability or older people who have ailments such as Alzheimer’s. They are the backbone of our society. We provide carers with direct payments totalling almost $1.6 billion per annum, which is an 85 per cent increase since 1999. There has been a significant increase in assistance to carers. The carer payment is provided to approximately 81,000 Australians, which amounts to about $800 million a year, and the carer allowance is paid to over a quarter of a million carers—about 290,000 of them—which accounts for about $760 million a year.

The federal budget is designed to keep our economy strong. As I said yesterday, it is about supporting the backbone of Australian society—the family—and this budget particularly provides support for families where there are carers and where there are people who require care. The Howard government will spend an additional $461 million for carers in this budget. It has been able to do that because of the social dividend that it gets from managing the economy well. From reducing Labor’s $96 billion debt, from paying back $70 billion of debt and from saving almost $6 billion in interest it has been able to give a social dividend to families and carers. Part of the $461 million will be in the form of a one-off payment for carers—that is $255 million in a lump sum payment for people on a carer pension. Those people on a carer pension will receive a $1,000 payment in their bank accounts this week. About 700,000 families received payments yesterday, another 400,000 receive them today and over 500,000 will receive them tomorrow. Recipients of carers allowance will receive $600 for each eligible person for whom they care. This is being made in recognition of the enormous contribution that carers make to our community.

With regard to the Commonwealth-state disability agreements, the Commonwealth has played its part in looking after the issue of employment of people with disabilities. Last year in the budget we increased spending in disability services and this year we have put in another $99 million to ensure that nobody will lose their jobs in the process of reform as they move forward in providing pro rata based wages. For their part, the states have not adequately come up to the plate in providing accommodation for people who have a disability. They have failed dismally. When you go to Western Australia and meet, as I did, a woman who is 76, who is caring for two people—one is in accommodation and the other lives with her—and who has not had a holiday for 27 years, you have to question what the states are doing about providing care for people who require accommodation. In this budget, we have put $72.5 million into an area, which the states ought to be looking after, to shame them into giving at least one month’s respite for carers over 70 who are caring for their ageing sons and daughters. The states ought to do their job. We are doing ours in employment—(Time expired)

Senator KNOWLES—Mr President, I ask a supplementary question. Could the minister please inform the Senate of the provisions for people who care for those with whom they do not live and of whether any such payments as she has already described
and is about to describe were ever paid by previous governments?

Senator PATTERSON—As I said, we are giving $72.5 million and asking the states to commit to matching that so that we can provide accommodation for sons and daughters of older carers who need respite. The states ought to be doing something about ensuring that older people have some security into the future. We have indicated that we will be working with the states to address the issue of succession planning in terms of where parents can look to for care for themselves as they age and for their children as they age. One of the things I am very proud of is the provision in the budget of $27 million for young carers—13-, 14- and 15-year-olds who are caring for a parent with a disability. We have young people like that. They will now get five hours respite a week during term time and two weeks full-time respite during the year, which they can commute into smaller amounts. This is the first time these people have had this sort of assistance, and I hope that it means some of them will now be able to finish school. We have also extended the carers allowance to people who do not live with the person they are caring for—(Time expired)

Iraq: Treatment of Prisoners

Senator HOGG (2.25 p.m.)—My question is to Senator Hill, the Minister for Defence. Does the minister recall in his statement to the Senate yesterday that he set out a long list of what he claims the Red Cross October working papers did not contain? In satisfying himself that those reports did not contain those allegations, did the minister himself scrutinise those working papers? Why did the minister choose yesterday not to disclose that the Red Cross had visited Abu Ghraib in October 2003 and that it had reported the serious concerns at the time to the coalition authorities, which included keeping prisoners completely naked and in total darkness, being punished by wearing women’s underwear on their heads, sleep deprivation, handcuffing causing wounds and lesions and being handcuffed naked to cell doors?

Senator HILL—I did say that the Red Cross working paper set out allegations of what it described as ill-treatment of prisoners. The purpose of the report was obviously to bring these allegations to the attention of the joint military command and to ask them to attend to the matters. There is no secret in that. Some of these allegations of ill-treatment were repeated in the February report, the formal report of the ICRC, to the occupying powers and to the Coalition Provisional Authority and are now on the Web. I think it is paragraph 27.

The point I was making yesterday was that there were not allegations of the type of criminal abuse which subsequently became known. We may not have known the details but we knew that there were allegations of criminal abuse in January of this year. At the end of April, early May, we knew exactly what those allegations were in the form of photographs—proof of the actions having taken place—that were published. The distinction I was making there is that there is a significant difference in the characterisation of the ICRC’s working documents and its reports from its visits and that which led to criminal prosecutions as a result of American actions.

Whilst the Labor Party’s criticism is one of inaction, it is interesting that, as soon as the Americans became aware of the allegations of criminal abuse, they immediately instigated an inquiry, and those investigations have promptly led to prosecutions. That is the process that should have taken place. In relation to generally improving the conditions of the jails, nobody is arguing that there
was no need for improvement in the conditions of the prisons during last year. But it has to be put in circumstances that existed in Iraq at that time, and it would seem that the Australian officials who had contact with the ICRC assisted them in getting their message across.

Senator HOGG—Mr President, I ask a supplementary question. Does the minister recall that in tables he produced yesterday there is a reference to a situation report covering the period 9 to 15 February 2004 which refers to the ‘ICRC report delivered to Bremer during the week, which is detailed, comprehensive and highly critical’? Can the minister now inform the Senate of what ‘detailed, comprehensive and highly critical’ concerns were contained in this situation report which was received by the Strategic Operations Division of Headquarters Australian Defence Force, the Defence Legal Service and the International Policy Division of the Department of Defence in February this year?

Senator HILL—I want to check the records, and I will be able to do that during the course of the many hours of the estimates committee hearing that we will have later today. My recollection is that there were no details of the allegations. The February report was not handed to Australia. It was not delivered to Australia because Australia was not responsible for remedying the alleged defaults.

Senator Faulkner—He’s talking about the sit rep.

Senator HILL—if it is the sit rep he is talking about, it referred to the fact that the February report had been delivered to Bremer, who headed up the CPA, which in effect was the de facto government of Iraq, and pointed out problems that the ICRC had encountered in its work from March through to November last year—in other words, the work that it had done not only in relation to Abu Ghraib but also in relation to other prisons, the methods of detention, the methods of arrest and so forth. (Time expired)

Youth: Homelessness

Senator BARTLETT (2.31 p.m.)—My question is to the Minister for Family and Community Services and the Minister representing the Minister for Children and Youth Affairs. Is the minister aware of the report published by the Institute of Health and Welfare which states that almost half of all homeless people seeking help through the Supported Accommodation Assistance Program are children? It also states that last financial year nearly 54,000 children were receiving assistance from SAAP because they were homeless or at imminent risk of homelessness. In addition, these agencies had to turn away valid requests for immediate accommodation from around 200 accompanying children every day? Does the government accept that it has a responsibility to address this major problem? Given that these figures show no improvement from the preceding years, what extra action has the government taken?

Senator PATTERSON—I thank the honourable senator for his question. Of course the Australian government takes homelessness amongst children very, very seriously. I welcome the Australian Institute of Health and Welfare’s report because it provides very valuable information which we will use to improve the Supported Accommodation Assistance Program. We are moving towards the next agreement with the states on that. The report shows that SAAP is well targeted, but we are not complacent about the numbers of accompanying children receiving SAAP services.

Senator Bartlett, I think you have to look at the issue of homelessness amongst children and families with children across a
broader scale. There are issues surrounding the SAAP provision, but there are other areas that cause families to be homeless. We have increased funding in family relationships counselling. We have assisted families through our very creative homelessness prevention pilots. These have been extended in this budget to over $10 million to assist families at risk to reduce the likelihood of homelessness by giving them assistance in financial planning, dealing with household organisation and maintaining their homes.

As the minister responsible for leading the debate on the effects of problem gambling, it dismays me that, although the states are making huge profits from gambling, not one state spends more than 0.5 per cent on dealing with problem gambling. That would be one of the causes of homelessness. The states are getting a huge windfall from gambling and I would expect them to spend at least a reasonable amount of that—certainly more than 0.5 per cent. The Commonwealth government contributes 60 per cent of the funding for SAAP services, and the states contribute 40 per cent. The states have had a windfall in land taxes and stamp duty, and I would expect them to come up to the plate and do better than they are in delivering SAAP services and contributing to the funding of them. The Commonwealth takes homelessness seriously, but the states do not contribute 60 per cent. We contribute 60 per cent of SAAP services funding. We have contributed more than $830 million to SAAP, which is an increase of 18 per cent, or $115 million, on the previous agreement.

We are working on a number of fronts to find suitable solutions. A number of programs complement SAAP and are aimed at addressing the problem of relationship and family breakdown—for example, Partnerships Against Domestic Violence. A total of 230 programs have been rolled out across the country, and we have committed $37.5 million in this budget to the issue of domestic violence among Indigenous families. A huge amount is being done, but the states need to come up to the plate and do more than they are doing—for example, spending some of the money from the windfall from gambling, stamp duty and land taxes on an issue which ought to be of concern to all of us. We are doing a huge amount by contributing 60 per cent of the funding of SAAP services. The states ought to be doing better.

Senator BARTLETT—Mr President, I ask a supplementary question. I thank the minister for her answer. The report also states that highest proportion of unmet needs for children were in the areas of support for sexual and physical abuse. Is the government going to provide specific extra funding targeted at this vital area? In relation to the minister’s comments about the states needing to step up to the plate, why is it that just yesterday the state of Victoria claimed that it was required to put in an additional $280 million over and above the total CSHA agreement to make up what it claims are cuts and a shortfall from the Commonwealth level? Will children with unmet needs be the victims in yet another finger-pointing exercise between the state and federal governments?

Senator PATTERSON—I think that, when you look at our record and when you look at the way in which we have managed this economy and reduced interest rates—from 17 per cent at the highest and 10 per cent when we came into government—to reasonable levels, you have got to look across the board at all the factors that affect homelessness. When you have got an interest rate of 17 per cent, you are likely to lose your house and not be able to pay your mortgage. When you have got a million people out of jobs, you are more likely to lose your house. As I said to the honourable senator, there are a multitude of factors which cause
homelessness. The Commonwealth contributes $1 for every 13c on average that the states put towards housing. The states need to actually contribute their fair share and use some of that money from gambling. As I said, less than 0.5 per cent of their take from gambling is spent on problem gambling. Many of the families that you are concerned about, Senator, and I am concerned about are victims of problem gambling, and they are victims of other areas in which the states have particular responsibility. *(Time expired)*

**Australia Council**

**Senator LUNDY** *(2.37 p.m.)*—My question is to Senator Kemp, the Minister for the Arts and Sport. Is the minister aware that section 6B(4) of the Australia Council Act 1975 prohibits the minister from giving any direction to the Australia Council in relation to ‘the making of a grant, the lending of money or the provision of a scholarship or other benefit’? How has the minister taken account of this legislative prohibition in directing the Australia Council to make the $5 million grant to the Melba Foundation-Melba Records? Has the minister received any legal advice on whether he breached the Australia Council Act in directing this grant to be made? If he has not done so, will the minister now undertake to seek this legal advice?

**Senator KEMP**—Thank you to Senator Lundy for the question. It is a rare pleasure to get a question from Senator Lundy, so it is particularly welcome. Senator Lundy, you and I were at a lunch today barely an hour ago. It was an Australia Council lunch. The CEO of the Australia Council stood up and made some comments. You were there, Senator Lundy, and you were smiling and nodding. My memory was that the substance of what was said was what a good job this government had done. Modesty prevents me from making any comments about the minister involved, but you would have seen at that lunch the great enthusiasm of the Australia Council for the work of this government and the great progress that this government has made in the arts.

Senator Lundy, you raised the issue of the Melba Foundation. I can tell the Senate I have had a great deal of correspondence on the Melba Foundation and the initiative in the budget. People have forwarded me letters which have been sent to the Melba Foundation, and one letter particularly pleased me. It came from a gentleman by the name of Barry Jones. Yes, it was the future and previous president of the Labor Party! Barry Jones praised this particular initiative to the Melba Foundation. He welcomed greatly the initiative that the government had taken, which will benefit Australian artists. Senator, I am a bit worried that you are tending to be a bit churlish on this issue, because I would have thought that this was a bipartisan approach. When someone as distinguished as Mr Barry Jones makes his views known, it rather suggests that it is a pretty good program.

This government is elected to govern. This government makes decisions. This government is quite happy to take initiatives in relation to the arts and, indeed, every other area. Senator Lundy, you would be aware that one of the important initiatives in this budget was Playing Australia. This was a government initiative, and this was an initiative which was widely welcomed throughout the arts community. Another initiative that we announced in the budget was the Melba Foundation and $5 million over five years. This was a government initiative, and we have asked the Australia Council to administer that particular grant. Equally, Senator, you would be aware that in the past other government initiatives like Books Alive, which was very much welcomed by the publishing industry—
Senator Lundy—Mr President, I rise on a point of order. I have given the minister three minutes to come to the substance of the question, which related to him seeking legal advice about the eligibility of this grant. Can you please draw his attention to relevance?

The PRESIDENT—I remind the minister that he has one minute remaining to answer the question, and I would think that that is possible. I also remind him to address his remarks to the chair.

Senator Kemp—I was reminding Senator Lundy that another important government initiative was Books Alive, which we asked the Australia Council to administer. I do not know whether you felt that it was improper for us to ask the Australia Council to administer Books Alive. Equally, Senator Lundy, you would be aware of the Myer report into the visual arts and crafts—again, important initiatives which the government endorsed and which were administered by the Australia Council. Senator, this is a good program. This is something which is going to benefit Australian artists. It does, I regret to say, typify the negative and carping approach that the Labor Party, and indeed Senator Lundy, do take from time to time on important initiatives, but let me tell you, Senator, I have received many letters of support in relation to this particular initiative—and why wouldn’t I? In the end, the bottom line is it will be Australian artists and musicians who will be benefiting. (Time expired)

Senator Lundy—Mr President, I ask a supplementary question. Will the minister confirm whether the Department of Communications, Information Technology and the Arts specifically recommended against directing the Australia Council to make this grant to the Melba Foundation? If so, what was the basis for this departmental recommendation against the making of this direction to the Australia Council? Was this recommendation on the basis of a possible breach of the Australia Council Act 1975?

Senator Kemp—I would really have to say—and I say this in a kindly and caring way, Senator—and I regret to say that I think you are struggling. You are struggling big-time here. Senator Lundy, let me remind you that the Melba Foundation grant in the budget has been widely welcomed, including, I might say, by Mr Barry Jones and a range of others—

Opposition senators interjecting—

Senator Kemp—Robert Ray says, ‘Well, who cares what Barry Jones says?’ If that is your view, Robert, let us record it in the Hansard, but that is not my view.

The PRESIDENT—Order! Minister, ignore the interjections and address your remarks to the chair.

Senator Kemp—I think Mr Barry Jones does make an important contribution, and I welcome his support.

Foreign Affairs: Sudan

Senator Brown (2.44 p.m.)—My question is to Senator Hill, representing the Minister for Foreign Affairs. I ask about the ethnic cleansing taking place in Darfur in Sudan. What action has the Australian government taken—either unilaterally or through global agencies such as the UN—for immediate intervention to stop the slaughter that is occurring in Darfur? Will the government consider the advice of a former US Assistant Secretary of State, Susan Rice, that there should be immediate international pressure through the United Nations, including an oil embargo on Khartoum, until this potential genocide is brought to a halt?

Senator Lightfoot—We would like to parachute you in there, Senator Brown.

Senator Brown—I object to that interjection on this matter.
The PRESIDENT—I am sorry, I did not hear that interjection.

Senator BROWN—I ask you to consider that interjection and to deal with it.

The PRESIDENT—I cannot consider what I did not hear, but I will review the Hansard.

Senator HILL—Obviously, I want to refer the question to the foreign minister in relation to any specific action he might have taken, but I can say in general terms that there have been good stories and bad stories coming out of Sudan in the last few months. The good story is that it looks as if there may be a conclusion to the horrible civil war that has lasted for so long and that has resulted in literally millions of deaths—and there has been the contribution of the international community in bringing that to an end. The efforts that have been made and the efforts that are being made by the United Nations to consolidate that peace are to be applauded. On the other hand, there have been the bad stories of the abuses in Darfur that have also been in the press in recent times. You obviously must feel great sympathy for the Sudanese as they go from one crisis to another. Exactly how the international community as a whole is responding, I am not sure. Obviously there is not a response that Australia can take as an individual party that is going to make a significant difference, but I would hope that, as part of an international community, every influence is being brought to bear to bring that brutality to an end. I will seek the details of that from the foreign minister.

Senator BROWN—Mr President, I ask a supplementary question. I am surprised at the minister’s lack of information on Australian initiatives on what is described by the United Nations as the world’s greatest humanitarian catastrophe. Given the gravity of the situation, I ask the minister to check that Australia cannot act on this by, for example, moving urgently in the United Nations for a United Nations response which involves potentially an oil embargo and an air flight embargo on US military planes bombing villages before the people are slaughtered by the Arab Janjaweed militia which is being funded and supported from Khartoum. I ask the minister whether the government will go into action on what is the world’s greatest humanitarian crisis at the moment and see what unilateral action it can take by stimulating the United Nations into action. (Time expired)

Senator HILL—I think it is fair to say that the UN is able to play a peacekeeping, rebuilding role, but it has not been particularly effective in intervening in such circumstances and bringing the violence to an end. The international community has looked to coalitions of the willing to do that, and in nearly every case it has expected that coalition to be led by the United States. Most of the international community does expect the US to do the heavy lifting. When the US does that, what appreciation does it get? It continually gets pounded by such as Senator Brown because it will never meet his standards.

Senator Brown—Mr President, I raise a point of order on relevance. The one-minute answer here should be addressing the question of what the Australian government is doing on this matter.

The PRESIDENT—I cannot direct a minister how to answer a question. He has 17 seconds remaining; if he wishes to avail himself of that time, he can.

Senator HILL—If Senator Brown is calling for some form of pre-emptive strike based on humanitarian grounds, I would be interested to hear him actually say that. That would be very interesting. There is this debate in the international community on the right to intervene militarily on humanitarian grounds. Simply cutting off fuel to Khartoum...
is going to hurt the poor as much as— (Time expired)

Sport: Drug Testing

Senator FAULKNER (2.50 p.m.)—My question is directed to Senator Kemp, the Minister for the Arts and Sport. I refer the minister to the recent decision of the Court of Arbitration for Sport regarding the possession of drugs by a young Australian Institute of Sport cyclist. Has the minister received a comprehensive briefing on this case by the Australian Sports Commission and/or the Australian Institute of Sport? Has the Chairman of the Sports Commission, Mr Bartels, been kept informed of the details of this case? Is the minister satisfied with the way this case was handled by the Australian Sports Commission, including the investigation of all the circumstances, and with the way the ASC complied and presented the case to the court? Can the minister assure the Senate that this case has been scrupulously handled throughout, from the initial discoveries to the finalisation of the case?

Senator KEMP—This government takes antidoping in sport very seriously. Indeed, this government has a record which I believe is second to none in dealing with drugs in sport issues. I would argue that this government has, in fact, led the world in many areas, in promoting antidoping in sport and in ensuring that our procedures are as strict as possible. Senator Faulkner has drawn an issue to my attention. I was not aware of any problems associated with this particular breach. I will certainly look closely at the matters he has raised in his question. If there are issues that I have to bring back to the Senate, I will certainly do so.

It is important that we make sure that our procedures in antidoping are up to date. The Senate would be aware that we are looking at a variety of procedures to deal with antidoping in sport. An independent tribunal is a matter which is turning the minds of this government. I will look closely at the matters that have been raised and see whether there are any other matters that I will have to bring back to the Senate.

Senator FAULKNER—Mr President, I ask a supplementary question. I am disappointed that the minister cannot answer a very important question for the Senate: whether the minister has received a comprehensive briefing on this case by either the Australian Sports Commission or the Australian Institute of Sport. He ought to be able to answer that question. I ask again whether the minister can say this afternoon to the Senate that he, as minister, is satisfied with all aspects of the Australian Sports Commission’s handling of this recent case of allegations of drug use by a member of the AIS cycling team. In the light of the circumstances of this case, together with the recent allegations of ASC mishandling of allegations against another AIS athlete—on that occasion, it was in the athletics program—what action has the minister taken regarding the handling of drugs cases by the Sports Commission and the AIS? (Time expired)

Senator KEMP—If Senator Faulkner is so interested in this case, it is a great pity that he did not come before the Senate estimates committee and join in the questioning that Senator Lundy undertook over quite a long period of time. I take these issues very seriously. In relation to the latter matter Senator Faulkner mentioned to do with athletics, my view is that Senator Lundy’s tedious questioning on this matter did not reveal any new information. In relation to the other case with the cyclist, I am aware of that particular case. In the first part of Senator Faulkner’s question, he raised particular concerns. I will look at those concerns and see whether there is anything that I can bring to the attention of the Senate on that matter. I am well used to allegations being made by Senator Faulkner
and by others, but let me say that the Australian Sports Commission has a very proud record. (Time expired)

Australian Electoral Commission

Senator MASON (2.55 p.m.)—My question is to the Special Minister of State, Senator Abetz. Will the minister advise the Senate of initiatives being undertaken by the Australian Electoral Commission, such as Rock Enrol, to encourage people to enrol to vote? Is the minister aware of claims that the system ‘glitches’ people off the electoral roll? Is the minister also aware of instances where people have been claiming that they are voting, when they are not even on the roll? What happens to votes in these circumstances?

Senator ABETZ—Senator Mason is right to congratulate the Australian Electoral Commission on their various initiatives to encourage enrolment, including attending citizenship ceremonies, school visitations and the Rock Enrol initiative where officials attend the Big Day Out encouraging young people to enrol. This initiative should not be confused with Labor’s ‘all rock and no enrol’ candidate, Mr Garrett. I am aware that Mr Garrett lamely sought to explain his absence from the electoral roll as follows. He said:...

... it’s one of these things in the system that has glitched me.

If you fail to enrol, you are breaking the law. It is not a glitch. It is not a technical error. The system is not to blame. Mr Garrett is no victim. If you fail to enrol, you are breaking the law. So when a person moves house—to pick a hypothetical example, from Balgowlah to Mittagong—they are obliged by law to inform the Electoral Commission of their new address.

I am aware that Mr Garrett has been claiming that the AEC never told him that he was not on the roll. It is not their job to do so. How are the AEC supposed to contact him if he does not tell them where he lives? Mr Garrett blames the bureaucrats, yet when I challenged him to allow the Electoral Commission to release his enrolment records he refused. How hard could it be? I asked the Electoral Commission for my records and received them within a day and a half, together with confirmation that I voted in 1996, 1998, 1999 and 2001. Mr Garrett could do exactly the same.

What is he trying to hide? What does he have to fear? Mr Garrett does not want the official AEC records to come out because he undoubtedly knows what they will tell us. After a full week, he still cannot get his story straight and claims he needs even more time. One day he said he became a silent voter in 1984 because he was running for the Senate on the pro-Trotskyite Nuclear Disarmament Party ticket and he was concerned for his family. That is a bit strange because, according to Who’s Who, Mr Garrett did not have a family until 1986—two years after the 1984 election and one year after he left the Nuclear Disarmament Party.

The following day Mr Garrett told us he might, in fact, have become a silent voter in the late eighties or early nineties after he got out of the NDP. Later in the same interview he said that it might have been in 1994. Yet according to media reports he was enrolled in Mackellar with his address on the roll between 1990 and 1994. The stories and excuses become more fantastic and unbelievable by the day. I am sure that the AEC could clarify the position once and for all and tell us whether he was enrolled as a silent voter, or indeed whether he was enrolled at all.

This Garrett debacle is another clear example of Mr Latham’s policy of headlines before homework. Mr Garrett’s short memory makes it appropriate that he tells me the truth about the forgotten years. I table documents that confirm my enrolment and recent
voting history. Mr Latham must do the same for Mr Garrett.

Senator MASON—Mr President, I ask a supplementary question. The minister has spoken of claims that some glitches have taken people off the electoral roll. Is there any evidence that gremlins have taken people off the electoral roll?

Senator ABETZ—If the matter were not so serious it would be laughable. Mr Garrett and the Labor Party are asking us to believe that there are certain gremlins at work that have victimised poor old Mr Garrett. The simple fact is that when the TV cameras are on Mr Garrett will take himself into a polling booth but he will not put himself onto the electoral roll. If there is a stunt in it, he is there. One wonders where he gets it from—a stunt a day. Of course, it is from his past credentials with the Greens. He is now transporting that to the Australian Labor Party. There are no gremlins. Mr Garrett has to take responsibility, as does Mr Latham, for Mr Garrett’s behaviour.

Senator Hill—Mr President, I ask that further questions be placed on the Notice Paper.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Environment: Antarctica

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (3.02 p.m.)—On 11 March Senator Brown asked me a question as Minister representing the Minister for the Environment and Heritage concerning Antarctica. The Minister for the Environment and Heritage has provided an answer, and I seek leave to have it incorporated in Hansard.

Leave granted.

The answer read as follows—

In relation to Australia nominating Antarctica for World Heritage listing, article 11 of the World Heritage Convention provides that a State Party may submit to the World Heritage Committee an inventory of suitable property forming part of the cultural and natural heritage that is ‘situated in its territory’. As the Australian Antarctic Territory (AAT) does not encompass the whole of the Antarctic continent, Australia is not in the position to nominate the whole of Antarctica for inclusion in the World Heritage List.

The Australian Government regards the legal regime provided by the Antarctic Treaty and associated instruments as the most effective way to manage the Antarctic region and protect its globally significant environmental values.

Regarding the issue that Senator Brown raised about global warming, the Government is aware that Antarctica plays an important role in global ocean currents and climate systems, and that changes are occurring in Antarctica.

Antarctica is a dynamic place with constant changes occurring through iceberg calving, break-up of ice-shelves and changes to sea-ice extent. However, the extent to which these changes are natural phenomena or human-induced is not clear. For example, the Ross Ice Shelf has calved a number of massive icebergs in the past few years, but the area of the ice shelf and the position of its front are still well advanced from the historical minimum. Similarly, a major part of the Larsen B ice-shelf in the Antarctic Peninsula region broke up in 2002, releasing approximately 720 billion tonnes of ice into the Weddell Sea, but an examination of the sediments underneath the broken-up Larsen B ice shelf suggests that break-up and reformation have occurred several times during the last climate cycle (of about 100+ thousand years).

The Australian Government is funding considerable work aimed at gaining a better understanding of the role of Antarctica in global climate systems. This is a major area of study for the Australian Antarctic Division and the Government has provided $25.7m over seven years for the Antarctic Climate and Ecosystems Cooperative Research Centre. This research is contributing to the international efforts to analyse present and past changes in the Antarctic ice sheet, ice shelves and sea ice, and numerical modelling to assess possible future changes.
Youth: Homelessness

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.02 p.m.)—In answer to a question today by Senator Bartlett concerning youth homelessness, I was talking about the amount of money the states were spending as a proportion of their gambling revenue on dealing with problem gambling. I may have said that they spend ‘0.05 per cent’, but it is less than 0.5 per cent. I want to clarify that in Hansard in case I did say ‘0.05 per cent’ in my excitement. It is less than half a per cent.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Australia Council

Senator LUNDY (Australian Capital Territory) (3.03 p.m.)—I move:

That the Senate take note of the answer given by the Minister for the Arts and Sport (Senator Kemp) to a question without notice asked by Senator Lundy today relating to Australia Council grants.

The key issue here is whether the direction by the Minister for the Arts and Sport to the Australia Council breaches the statutory independence of the Australia Council. If so, it would be the first instance of this occurring since the Australia Council’s inception some 30 years ago. The purpose of statutory independence is to ensure that funding decisions are not subject to the political agendas of the government of the day, whichever party, or the personal preferences of arts ministers or other ministers of the government. This independence, or arms-length principle, is extremely important for the robustness and integrity of the Australia Council. Hence my questions today.

I asked the minister very specifically about his decision in relation to section 6B(4) of the Australia Council Act, but alas no answer was forthcoming. My very specific question was whether the minister had taken into account this legislative prohibition in directing the Australia Council to make the $5 million grant to the Melba Foundation-Melba Records. I also asked the minister whether he had received any legal advice on whether this could possibly constitute a breach of the act. The minister comprehensively failed to address the issues of substance in my question, which only begs the question: what was the process that the government embarked upon that culminated in the awarding of this $5 million grant?

We have no objection to the money going to support Australian opera or classical music, but why on earth did the government use this unusual process? Why didn’t the money go to the Australia Council and have Melba apply to the Australia Council so that the merits of that project could be assessed along with the merits of other companies competing for the same sort of funding for similar projects, like ABC Classics or Tall Poppies or the many others doing good work in this area? How was the $5 million arrived at? There does not seem to be any evidence around of a due process being followed.

We know that the minister is in possession of a large number of testimonials relating to the various merits of this grant, but testimonials do not constitute due process as far as a merit assessment by the Australia Council goes or, indeed, the government. As far as we know, this type of grant being provided through the Australia Council is unprecedented. The minister drew an analogy with Books Alive, but that was not a disproportionately large grant to a single company. This has not been done before. I believe it represents a new step in the undermining of the cultural independence of the Australia Council.
This is not in any way a reflection on this project. I do not actually know whether it is meritorious or not, but I would like the government to provide an answer to this parliament about how it assessed the project’s merits. I think that is fair, in respecting the integrity and commitment of the Australia Council and all of the applicants, particularly in this similar area, relating to music and CDs. They deserve the level of respect of an explanation about this grant. It is important to understand the maths of this—$5 million to fund 35 CDs. If you break it down in simple mathematical terms, it equals $143,000 per CD. The maximum grant given by the Australia Council previously for a CD is $7,000.

The other point worth making is that this is a significant policy shift by the government. It is quite an unusual grant. I know issues have been raised—I have certainly raised some—about the involvement of other cabinet ministers in this decision. I would like the minister to take on notice the questions that I have asked today and provide a proper explanation to the chamber. I am particularly interested in an answer to the supplementary question relating to the involvement of the Department of Communications, Information Technology and the Arts in making recommendations against providing the grant to Melba Records in this way. Melba may well be worthy and reputable, as the authors of the many testimonials in the minister’s possession attest, but the opposition has given the minister plenty of opportunities to establish Melba’s credentials and he has chosen to ignore them. (Time expired)

Senator Lundy—No, but we do federally, so why don’t you respect it?

Senator KEMP—My understanding—which you can correct if I am wrong—is that these grants are generally signed off by the state minister for the arts in Victoria.

Senator Lundy—Why don’t you follow the procedure of the Australia Council?

Senator KEMP—We have the Australia Council, and in my view it performs valuable work. This government has been supportive of the Australia Council, but at the same time there are other areas where the government is curious attitude she has adopted to this. I think we are in agreement that a lot of people think this is an excellent initiative. It has been widely praised by people from both sides of the spectrum, and I think that is a good thing. Senator Lundy has not come to a conclusion herself yet. I do not know how much longer Senator Lundy needs to come to a conclusion, but this is an important initiative which in the end will benefit a significant number of Australian artists. I think that is a good thing.

Senator Lundy is worried that somehow this government initiative was done as a budget initiative and not, for example, as money that the Australia Council may have granted from its own uncommitted funds. There is the interesting issue—I suppose it is a philosophical issue—that this government does take decisions, as I said in question time. Governments are quite entitled to take decisions in relation to the arts. When you go around the states and ask to look at the arts grants that state Labor governments make, it is interesting to ask yourself: is there an Australia Council process in relation to state governments? The answer is that there is not, largely. There may be one or two states, but the advice I have is that my home state of Victoria does not have an Australia Council process.

Senator Lundy—No, but we do federally, so why don’t you respect it?

Senator KEMP—My understanding—which you can correct if I am wrong—is that these grants are generally signed off by the state minister for the arts in Victoria.

Senator Lundy—Why don’t you follow the procedure of the Australia Council?

Senator KEMP—We have the Australia Council, and in my view it performs valuable work. This government has been supportive of the Australia Council, but at the same time there are other areas where the government is
entitled to take initiatives—for example, Playing Australia. There was not an Australia Council assessment of Playing Australia. The government decided to give a very significant increase to Playing Australia.

**Senator Lundy**—It doesn’t go through the Australia Council.

**Senator KEMP**—Senator Lundy, I listened to you in silence and I think you should listen to me in silence. The government decided that this was an important initiative and we decided to significantly increase the money available to Playing Australia. There was not a word of criticism—that was the process. I am sure the Treasurer agreed with that, or I would not have got it through, as indeed did cabinet. They felt that this was an important initiative. Equally, we considered submissions from a whole range of areas, one of which was from the Melba Foundation. The government are quite entitled to see whether this is a worthwhile project that should be funded. The government decided that this was a project that should be funded and we made that decision. We are entitled to make that decision and we have asked the Australia Council to administer it. Senator Lundy thinks this is something terrible. It is not something terrible; it is good news for artists and musicians. It is actually a good news item, not a bad news item. It does astonish me, Senator Lundy, that you find it impossible to give unqualified support to this further boost for the arts that the Australian government gave. I think that is a pity.

Senator Lundy, as you would find if you ever became a minister, you are entitled to seek advice from a wide range of areas. You are entitled to do that, and you should. If you are going to be an effective minister, you should seek advice from a wide range of areas; and, on that basis, you reach your conclusions. You make a recommendation and you hope that your recommendation will be supported by your colleagues. That is what happens. This government was pleased to take this important initiative in the arts budget. It is only one item in the arts budget, which was a very good arts budget. Senator Lundy would know, because we were together at lunch time, of the important range of programs that we have funded through the arts. *(Time expired)*

**Senator COOK (Western Australia)** (3.13 p.m.)—I have always thought that there was something sinister about the born-to-rule mentality. The conservatives who hold that view mostly exhibit it through arrogance and through contempt of lesser mortals. But there is a dark side of the born-to-rule mentality, and we have just had an example of it here this afternoon from the Minister for the Arts and Sport, Senator Kemp. That explanation given to the Senate just does not wash. There is a term that the government should be aware of: good governance. Good governance means we live up to certain exemplary standards of how we manage government. Governments have institutional structures to distribute money. The money in the Commonwealth budget does not belong to Senator Kemp or Treasurer Peter Costello to give out to whomever they favour. There are structures and filters to make sure that government money—taxpayers’ money—is distributed fairly and openly to the deserving, with a case, to achieve the objectives that are set for it. In the arts and cultural field, the mechanism that does that is the Australia Council. For arts and culture grants, where there are a lot of struggling artists, there are always more people applying for a bit of assistance to lift Australia’s profile in arts and culture than there are funds available to meet their needs.

I understand that the Melba Foundation and Melba Records put out a handful of CDs each year. They are of established artists who are mostly operating overseas and making a
quid for themselves. They are not for the young, struggling artists who, in the next decade, will become household names where public policy can properly reach down and give them a hand up. It publishes material from established artists. It did not approach the Australia Council for funds; it lobbied ministers direct. Everyone else who had a fair case in this field was bypassed. Everyone else who has to demonstrate the merit of their application did not get a look in. If you knew the minister and can make your case, in this case you got $5 million. And a $5 million grant in the arts field is a big lick of money indeed.

We are entitled in this chamber to ask: on what basis is $5 million of taxpayers’ money handed to this organisation when everyone else has to jump through the hoops of transparency, accountability and proof that they spend the money for the purpose for which it is given? This organisation does not have to. What is its business case? What is it actually going to do with this money? We know, given the qualification published, that it works out at $143,000 per CD that it brings out. If you are an applicant to the Australia Council, per CD you get $7,000. Why does this company get $143,000? Why is it that the Treasurer and the arts minister are not prepared to subject this company to the scrutiny of the Arts Council, along with everyone else? What do they know about this that the arts experts in Australia do not know and will not be advised about? They are serious questions in terms of good governance. And the issue that the opposition rises on over this is that of good governance and fairness to not just some artists but all artists and people wishing to make a profession out of cultural expression in this country.

This system fundamentally works if it is transparent. Why is it that the Treasurer, who apparently knows this company, is not prepared to put on the public record the reasons the funds were granted? Do they have connections with the Liberal Party that we do not know about? Do they have some other sort of insider-trading advantage over every other arts group in Australia? We have had thrown back at us, by way of explanation, that the former President of the Labor Party, Barry Jones, regards the quality of the classical music that this company produces as good and that he is prepared to testify to that. That is a misuse of Barry Jones’s reputation. He is an aficionado of classical music and a good critic of it too, so you can accept his word on that—and I am sure it is true—but Barry Jones is also an upholder of democratic principles and institutions in this country and would insist on everyone being treated fairly and properly. (Time expired)

Senator JOHNSTON (Western Australia) (3.18 p.m.)—I am left wondering, having heard the speakers, what the motivation is for this motion to take note today. It begins to dawn on me that we have had a little bit of a complaint put at the feet of the opposition members here. One of the Labor Party’s little secular, vested interest, arts, commune type groups is complaining that their application has been rejected. The Labor Party’s great contribution to the arts, when they were in government, was their support for the great initiative that was the design of surfboards for women, to which they committed a number of millions of dollars, as I recall.

Is it enough to come here and attack the government’s record and achievements on the arts and national heritage? Let us talk about what we have done. In the 2004-05 budget the government announced some $398 million of triennial funding towards the Australia Council’s enhancement of various artists, production infrastructure and other assistance. This is in addition to the increased funding of $18.3 million over four years given last year to the Australia Council for visual arts and crafts in response to the
Myer report. This is just good government in action. In 2001 the Howard government provided an additional $19½ million for arts and art activity, including boosted funds for the Australian Business Arts Foundation and for Australia’s museum and art collections. It also provided a further $44 million funding increase to the Australia Council for major performing arts companies following the 1999 Nugent inquiry.

Then we go to further budget initiatives wherein this government provided a further $44 million over the coming four years for the Educational Lending Right scheme, which in the first four years of operation has provided $38 million to authors and publishers in recognition of the use of their works in educational lending libraries. The government renewed its commitment—and this is a very important aspect from the point of view of Western Australia, my home state—to the regional art fund. In the last budget it received $10.7 million to be provided over the next four years. A program was established to provide funding of $2.5 million each year to assist local-level arts and cultural projects throughout regional Australia. What a fantastic concept and what a fantastic contribution this government has made. That is in stark contrast to what the states are doing.

I had the pleasure yesterday of a visit to my office here in Canberra by Mr Andy Farrant, from Country Arts WA, who is charged with the responsibility of administering one of the great initiatives of this government—that is, Playing Australia. The last project that Playing Australia brought to Western Australia was the Aboriginal singing and arts group called Nabarlek. They toured a dozen Aboriginal communities throughout central Western Australia—a fantastic troop with some $60,000-worth of sound equipment, going from place to place and all funded largely by the Howard government. They visited Punmu, Warburton—numerous Aboriginal communities—Port Hedland, Karratha, Carnarvon, Onslow et cetera, a very large number of places, such that the people of regional Western Australia had the benefit of experiencing a tremendous and important project funded by the Australian government. Playing Australia is a huge success story.

The Melba Foundation, launched in 2003, has a mission to promote Australia’s performers at home and overseas through international distribution of Australian classical recordings. Founder, Maria Vandalme, is reported to have said, ‘It will create a permanent and priceless legacy of Australian classical artists.’ What on earth is wrong with that? I would have thought, given our track record of what we have achieved in stark contrast to the opposition, it is a great project. (Time expired)

Senator MARSHALL (Victoria) (3.23 p.m.)—I rise to take note of the answer given by Senator Kemp. It is always slightly interesting and amusing to hear Senator Kemp try to answer questions, particularly from Senator Lundy on matters to do with the arts. He always starts off by saying: ‘It is a rare pleasure indeed to receive a question from Senator Lundy.’ I have heard that so many times. I do not know how rare it can be these days. I have never heard him, when he talks about these ‘rare pleasures’ actually getting to answer one of the questions asked. Today was simply no exception. Senator Johnston just asked: what is the motivation for these questions? The motivation and the issue at hand today, which we are discussing, are transparency and due process. I would have thought that is a very important thing for all senators, particularly ministers, to be very concerned about—that is, the process of spending tax-payers’ money.

Here we have $5 million being provided by way of a grant which seems to have no justification on merit and, if there is, the
CHAMBER

[Speaker] The minister seems unable to put that before the Senate or refer to it in any way whatsoever. We are left without any knowledge about why this organisation, in an unprecedented way, has been granted through the budget process $5 million. Labor do not understand how this has happened. The minister simply refuses to justify the grant and that is of significant concern to us.

I can understand why Minister Kemp may be unconcerned about $5 million, compared to the billions of dollars this government is currently throwing around the country pork-barrelling for the election. Indeed, $5 million does not sound much compared to that. But $5 million is a lot of money and $5 million does need to be accounted for. The proper process of giving grants to the arts is going through the Australia Council. The Australia Council is a statutory independent body that is designed to deal with these matters so there can be no political interference. It is there to establish an arms-length decision-making process from the government of the day—either party in government. That process has been well established and the precedent has always been to move these grants through the Australia Council. We do not want grants being made that do not properly reflect the arts needs of our community.

We do not need political interference, like we have seen in Parliament House recently, where a small group of parliamentarians want to influence the sort of art that is enjoyed through this building and want to take us back to 16th or 17th century art. They want to move away from contemporary art and the very important role that the parliamentary art department plays in supporting young, developing and new artists of this country. That is a very important process. Again, that is why it is important when government money is being spent that it is done at an arms-length distance from the government of the day.

The Australia Council also has the expertise in making the decision based on merit. Again, there is no evidence at all that this was merit based. I cannot say for sure that it was not—I just don’t know. But if it was, why can’t the minister provide the detail of that? Why can’t he, as he was asked in the supplementary question, give us the documentation or the detail of the department’s recommendation for this grant? The minister simply failed to answer that question. It was a very specific question: can he provide the department’s recommendation? He refused to answer it. We had another little whimsical walk around the track. We heard about his lunch and he talked about bipartisan issues, government initiatives and all that is nice. Quite frankly, if it is an important government initiative, it has to be based on something. The decision has to be made against some test. What is the merit for it? Can he not document the process for that?

The Australia Council knew nothing of this grant before it was announced in the budget papers. There was no discussion with it; there was no discussion of the merit, there was no process of consultation. Yet, once the $5 million is allocated in the budget, who is then responsible for administering the money? The Australia Council. The government is imposing a process on the Australia Council in which the Australia Council had no role to play and no position to play in the original decision of granting that $5 million. Labor say there has to be proper process and transparency when spending taxpayers’ dollars and this government, and this minister in particular, has not met the most basic standards of accountability required by this parliament. (Time expired)

Question agreed to.
COMMITTEES
Reports: Government Responses

Senator HILL (South Australia—Minister for Defence) (3.28 p.m.)—I present three government responses to committee reports as listed on today’s Order of Business. In accordance with the usual practice, I seek leave to incorporate the documents in Hansard.

Leave granted.

The responses read as follows—

Government Response to the Senate Standing Committee for the Scrutiny of Bills Sixth Report of 2002

Application of Absolute and Strict Liability Offences in Commonwealth Legislation


2. The use of strict and absolute liability is necessary in certain circumstances for ensuring the effective application and prosecution of Commonwealth offences. However, the Government recognises that “no fault” liability should be applied only in instances where it is necessary and appropriate.

3. Guidelines reflecting the Commonwealth’s policy on strict and absolute liability formed part of the Attorney-General’s Department (AGD) submission to the Committee. The Committee’s views have figured prominently in the development and evaluation of Commonwealth policy on such matters over many years.

4. The Government recognises and values the need to maintain fundamental concepts of criminal law liability, such as the need for the prosecution to prove beyond a reasonable doubt both the physical and fault elements of criminal offences. The Criminal Code reflects the common law and Commonwealth policy position that a person should only be guilty of an offence if the prosecution can prove fault (intention, knowledge, recklessness or negligence) for each element of the offence. The only exceptions to this position are where there is express legislative provision that an offence or element of an offence carries absolute or strict liability.

5. The Government generally supports the recommendations and principles set out in the Committee’s Report.

6. The Committee made four recommendations. This response addresses each one.

Substantive responses to each Recommendation of the Sixth Report

1. The Committee recommends that the Criminal Code provisions relating to strict and absolute liability are appropriate and adequate and do not require amendment at this time.

Government response to Recommendation 1: accepted

2. The Committee recommends that the Legislation Handbook should require agencies to abide by the principles regulating the application of strict and absolute liability set out in the Report when developing new or amending legislation which includes strict and absolute liability; the Attorney-General’s Department should coordinate this process.

Government response to Recommendation 2: partially accept

The Government recognises the merits of regulating the application of strict and absolute liability by principles such as those set out in the Committee’s Report. The Legislation Handbook already requires agencies to consult with AGD on legislative provisions that create criminal offences and impose pecuniary or imprisonment penalties, empower officials to enter premises or examine property or documents, reverse the onus of proof, or empower a person to certify conclusively that certain facts exist. The Government also requires agencies to seek agreement from the Minister for Justice and Customs on the criminal law aspects of new legislative proposals. The guidelines on strict and absolute liability submitted to the Committee guide ministerial decisions on legisla-
tive proposals. Most of the guidelines are the same as or consistent with the principles set out in the Committee’s Report.

The Government does not accept the need to require agencies to comply with the principles. Decisions should continue to be made by reference to the specific provisions of each piece of legislation. However, any departure by an agency from these principles should be justified to the Minister for Justice and Customs when seeking his approval and in the Explanatory Memorandum to the relevant Bill. Parliamentary scrutiny allows Government decisions to be reviewed.

The Government generally supports the principles set out in the Committee’s Report subject to the following comments.

• strict liability should, wherever possible, be subject to program specific broad-based defences in circumstances where the contravention appears reasonable, in order to ameliorate any harsh effect; these defences should be in addition to mistake of fact and other defences in the Criminal Code.

The Government considers the defence of mistake of fact (in relation to strict liability) and other defences in Part 2.3 of the Criminal Code to be sufficient safeguards for strict and absolute liability offences.

• strict liability offences should, if possible, be applied only where there appears to be general public support and acceptance both for the measure and the penalty.

The Government supports this recommendation and considers that its consultation mechanisms combined with Parliamentary scrutiny processes (including Parliamentary legislation committees) protect the public interest sufficiently.

• strict liability offences should be applied only where the penalty does not include imprisonment and where there is a cap on monetary penalties; the general Commonwealth criteria of 60 penalty units ($6,600 for an individual and $33,000 for a body corporate) appears to be a reasonable maximum.

The Government supports this general principal. However, a higher maximum pecuniary penalty may be appropriate where the commission of the offence will pose a serious and immediate threat to public health, safety or the environment.

• absolute liability offences should be rare and limited to jurisdictional or similar elements of offences; in contrast to the present Commonwealth policy absolute liability should not apply to offences in their entirety in relation to inadvertent errors including those based on a mistake of fact.

The Government does not agree to limit the use of absolute liability to jurisdictional or similar elements of offences. The Government may want to apply absolute liability to all elements of an offence to deal with matters where an offender’s mistake of fact should not be an excuse. Such matters might relate to national security, health, safety or the environment.

Any proposal to apply absolute liability in such circumstances would still be subject to Parliamentary scrutiny and justification in the relevant explanatory material (as per the Committee’s First Report of 2003 at page 20).

• agencies should acknowledge that there may be areas where existing strict liability offences or the way they are administered may be unfair; in these cases agencies should review the offences under the general coordination of the Attorney-General’s Department.

The Government supports the ongoing review of legislation to ensure its appropriateness. Such reviews are the responsibility of individual agencies. However, it is a requirement that agencies consult with the Attorney-General’s Department and seek the agreement of the Minister for Justice and Customs on the criminal law aspects of new legislative proposals.

• the Attorney-General’s Department should coordinate a new major project to analyse the substantive policy merits of existing harmonised strict and absolute liability offences; the object of the project should be to amend these provisions where necessary to achieve consistency of safeguards across all agencies.

The Government does not believe such a project is warranted. The Criminal Code Harmonisation Project has already achieved a significant degree of certainty and consistency in the application of strict and absolute liability. The requirement that
agencies consult with the Attorney-General’s Department and seek the agreement of the Minister for Justice and Customs on the criminal law aspects of legislative proposals continues to promote greater consistency.

- strict liability offences should be designed to avoid the likelihood that those affected, particularly by the issue of an infringement notice, will pay the lower penalty simply because it is easy and convenient to do so, rather than spend the money and time to pursue what might be a legitimate defence; any agency which encouraged this tendency would be acting improperly

The Government disagrees. Infringement notices linked to strict or absolute liability offences give individuals a choice between paying the penalty and defending the charge in court. Such notices are used for relatively minor offences with low penalties and they alleviate pressure on overcrowded State and Territory criminal justice systems; freeing that system up to deal with more serious offences.

- external merit review by the AAT or other independent tribunal of relevant decisions made by agencies is a core safeguard of any legislative or administrative scheme; every agency which administers strict liability offences should review those provisions to ensure that this right is provided

The Government disagrees. Strict and absolute liability offences are criminal matters. The question of whether a person has breached an offence of this type is determined by the criminal courts on proof of evidence presented by the prosecution. Merit review by the AAT or other tribunal is not appropriate.

- licence holders who hold a licence on condition that they comply with an Act may be prejudiced by the inappropriate use of strict liability to vary, suspend, cancel or not renew their licence; processes in relation to licences should be conducted in a transparent manner with adverse decisions subject to external independent merits review

It is possible for the breach of a licence condition to be an offence or element of an offence. However, varying, suspending, cancelling or refusing to renew a licence because of a breach of a licence condition is an administrative sanction, not a criminal one.

The Government notes that the Attorney-General referred to the Australian Law Reform Commission matters relating to civil and administrative penalties including the level of those penalties, enforcement of the penalties and their relationship with criminal law. The Commission’s report was tabled in Parliament in March 2003 and covers matters raised in relation to licensing schemes.

- Comprehensive internal review procedures are an essential safeguard for strict liability; as with other aspects of administration of strict liability these should be transparent and detailed, clearly providing a process which is both independent and credible

The Government disagrees. Strict and absolute liability offences are criminal matters. The question of whether a person has breached an offence of this type is determined by the criminal courts on proof of evidence presented by the prosecution. Internal review procedures are not appropriate.

- consultation with industry is essential before any decision to introduce or vary strict liability, with the valid concerns of industry being taken into account; industry consultation should be genuine, not a formality to legitimise plans already finalised

The Government supports this recommendation and considers that its consultation mechanisms combined with Parliamentary scrutiny processes (including Parliamentary legislation committees) sufficiently protect industry interests. This protection is enhanced further by the Government’s policy on best practice process for regulation announced in the Prime Minister’s ‘More Time for Business’ statement on 24 March 1997. The policy requires a regulation impact statement (RIS) to be prepared for all proposed new or amending legislation which directly affects business or which has a significant indirect effect on business or restricts competition. The Office of Regulation Review in the Productivity Commission is responsible for advising agencies on RIS requirements, and assessing and reporting on compliance with those requirements.
every scheme of strict liability should be administered through detailed, binding guidelines which should be agreed between the relevant agency and industry and tabled in both Houses; breach of the guidelines by an agency should preclude prosecution of those affected by the breach.

The Government does not support this proposal. Criminal offences are created by legislation and should not be modified in their operation by internal agency guidelines.

Decisions on prosecution are made by the Director of Public Prosecutions in accordance with the Commonwealth’s Prosecution Policy, which includes considering whether there is sufficient evidence to establish that an offence has been committed.

The Committee recommends that the Attorney-General’s Department should coordinate a new project to ensure that existing strict and absolute liability provisions are amended where appropriate to provide a consistent and uniform standard of safeguards. This should also be included in the Legislation Handbook.

Government response to Recommendation 3: not accepted

This is not warranted because:

- the Criminal Code Harmonisation Project achieved a significant degree of certainty and consistency in the application of strict and absolute liability.
- it is already a requirement that agencies consult with the Attorney-General’s Department and seek the agreement of the Minister for Justice and Customs on the criminal law aspects of legislative proposals, which promotes greater consistency.
- all existing strict and absolute provisions have been the subject of Parliamentary scrutiny; and
- no evidence is available to support a conclusion that any of the existing strict and absolute liability schemes are operating in a way which was not intended at the time of passage of the relevant enabling legislation.

4. Agencies should take into account the above principles in the day-to-day administration of strict and absolute liability. The principles should be included where applicable in agency guidelines.

Government response to Recommendation 4: partially accept

Subject to the comments made in the Government’s response to recommendation 2, the Government agrees that agencies should take into account the principles outlined in the Committee’s Report. However, any decisions on how those guidelines should be adopted or promulgated within an individual agency should rest with that agency.

AUSTRALIAN GOVERNMENT RESPONSE TO THE PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES INQUIRY INTO THE DISCLOSURE OF COMMISSION ON RISK PRODUCTS

INTRODUCTION

The importance of disclosure

Disclosure is an essential element of the consumer protection rationale underlying the Financial Services Reform Act 2001 (FSR Act). The Government considers it fundamental that consumers of financial services receive adequate information on which to base decisions to acquire financial services or invest in financial products. Disclosure of commissions and other benefits is a key component of the disclosure regime established under the FSR framework, especially where consumers are being provided with personal advice recommending that they acquire a particular product or make a particular invest-
The disclosure of information about commissions provides consumers with information which is relevant to, and of potential value in, reaching their decision on, for example, whether they should acquire a particular financial product. The FSR disclosure requirements recognise that if consumers are to rely on advice from other parties, it is appropriate that they be aware of any potential bias or influence on the advice provided. Consequently, in relation to the provision of personal advice the FSR legislation requires commission to be disclosed only where it might reasonably be expected to be or have been capable of influencing the providing entity in providing the advice. At other points in the provision of financial services and products, different disclosure requirements apply (see below).

The FSR legislation was the subject of detailed, extensive and lengthy consultation and issues surrounding the disclosure of commission were carefully considered throughout that process.

Disclosure under FSR

Disclosure under the FSR regime applies in respect of financial services supplied to retail clients, and operates at 3 stages:

- When a person first contacts the provider of a financial service, they should receive a Financial Services Guide (FSG), which may be a relatively generic document identifying the service provider and describing the types of services it provides. The FSG should also include information regarding remuneration arrangements that are attributable to the provision of the relevant financial services, or conflicts of interest or associations that might reasonably be expected to be capable of influencing the providing entity in providing any of the relevant financial services.

- When a financial service provider gives personal advice (which is defined as advice that takes into account a person’s objectives, financial situation and needs) they should provide a Statement of Advice (SoA). The SoA is a more individually tailored document than the FSG. It sets out the actual advice given and information about the basis for that advice. It is also required to include information about conflicts of interest, associations or remuneration (including commissions) that might reasonably be expected to be or have been capable of influencing the providing entity in providing the advice.

- At or before the time that a person actually acquires a product, the person should receive a Product Disclosure Statement (PDS). The PDS is specific to the product being acquired, and includes information relating to the benefits and risks of the product, any costs such as fees and charges, as well as information about remuneration to the extent that it will impact on any returns to the person generated by the product.

It is important to emphasise that different purposes are served by each stage of disclosure reflecting the links in the ‘chain’ of delivery of financial services. The FSR disclosure requirements are specifically tailored to recognise these differences.

- In relation to the PDS, the directed disclosure approach within the legislation recognises that information material to an investment decision includes costs to the person of the product being acquired. Therefore, commissions that represent a cost (or lower the return) to the person need to be disclosed at this stage.

- However, at the SoA stage disclosure is directed at informing the person of any potential conflicts of interest or influences that may impact on the advice they receive—advice which should be tailored to their particular circumstances (i.e. personal advice).

  - The presence and amount of commission payable to the adviser, to the extent that it might reasonably be expected to be or have been capable of influencing the advice provided, is a relevant factor to the person receiving the advice.

  - Hence, the legislation is intended to ensure the person is put in a position to make an assessment and appropriately weight this potential for influence and this can only be done where the information is provided to them.
Unlike disclosure made at the point of acquisition of the product (the PDS stage), at the point where personal advice is being provided, it is irrelevant whether the payment of commission will affect the cost of the product or the return—what is important is whether the payment may have influenced the advice.

RESPONSE TO MAJORITY REPORT RECOMMENDATIONS

Recommendation 1
The Committee recommends that the Department of the Treasury and ASIC:

- investigate claims that there could be disclosure abuses on packaged products where commission disclosure requirements vary on the products involved; and
- where the potential for such abuses is confirmed, should take the appropriate action to close off this potential.

Response
The Government notes that the Australian Securities and Investments Commission (ASIC) was provided with significant additional funding totalling $90.8 million over four years to enhance its enforcement and compliance capacity, including a dedicated amount of $69 million for the implementation and enforcement of the FSR legislation.

In accordance with its responsibility for regulation of consumer protection and market integrity in relation to the financial services industry, ASIC will continue to monitor and promote compliance with the commission disclosure requirements of the legislation.

The Government agrees with the views expressed by supporters of commission disclosure that consistent disclosure requirements across all financial products, whether or not they are risk or investment-based, will reduce the likelihood of abuses of disclosure where ‘packaged’ products are involved.

Recommendation 2
The Committee recommends that the disclosure provisions for the Financial Services Guide and the Statement of Advice—at the very least—should provide an exemption for the commission component paid in respect of back-office functions performed on behalf of the product issuer or provider.

Response
The Government does not accept this recommendation.

The Government does not support giving revenue derived from ‘back-office’ functions any special or different treatment beyond that already provided under the FSR Act. Accordingly, it believes that payments for such functions should be disclosed in the FSG if they are received in respect of, or are attributable to, the provision of the relevant financial services. In the case of the SoA, such payments should be disclosed if they might reasonably be expected to be or have been capable of influencing the providing entity in providing the personal financial product advice.


“Where financial service providers and product issuers enter into an arrangement that the service provider will perform ‘back office’ functions on behalf of the issuer and the payment for performing those functions is included in the commission paid in respect of the individual products, then this component of the commission does not need to be disclosed.”

However, the Commentary then goes on to say:

“The basis for this is that this component of commission represents payment by a product issuer to a financial service provider for the performance of services that would otherwise be performed by the product issuer, for example underwriting. These services could not be said to influence the giving of advice where the payment for the service equals the cost of performing the service.”

Thus it has always been the intention under the legislation that commission received for the performance of back office functions is not ‘automatically’ exempt from disclosure, but only where the payment of commission does not influence the giving of the advice. The Commentary
provides some guidance by indicating that this criterion could, for example, be satisfied where the payment for the service equals the cost of performing it.

More generally, there is by no means a consistent definition across the financial services sector of what constitutes a 'back-office' function. It is not appropriate or practically possible to exempt a range of functions/activities that are ill defined. However, the Government notes that industry and ASIC have been discussing how to address practical issues that may arise in relation to commission disclosure in a FSG or a SoA, such as defining the range of services or functions to which it applies.

The Government notes the comments of Senator Murray (at page 67 of the Committee’s Report):

“To mitigate the impact on small business, it may be appropriate to include with the commission disclosure some commentary that the commission includes a back-office, salary and service component that would not normally be included in the commission of a salaried employee of the product manufacturer or owner. In this way, small business operators in regional areas would be helped in justifying their commissions to consumers to demonstrate that the price of the risk product is not significantly different despite the nominally higher commission.”

The disclosure requirements do not preclude the providing entity explaining how remuneration (including commissions) is used, or the purposes to which it is put. For example, the provision in the Corporations Act 2001 (the Act) relating to SoAs given by an authorised representative specifically acknowledges that the SoA may also include other information (see paragraph 947C(5)(b)).

The Treasury has previously indicated to the Association of Financial Advisers that it would be possible, and indeed well may be helpful to clients, for advisers to provide a breakdown of their commission payments showing what amounts or percentages are attributable to overheads and other business expenses.

Such information would need to meet the requirement that information relating to remuneration included in a SoA must be provided in a manner that is clear, concise and effective and easy for the client to understand (see Corporations Subregulations 7.7.04(4) and 7.7.07(4)). Such information must also, of course, be accurate and any statements that might refer to other advice providers (such as salaried advisers) would need to be carefully worded so that they do not unfairly portray that advice delivery mechanism, or include unsubstantiated claims about a particular product provider or adviser.

Recommendation 3
The Committee recommends that the Government amend the Corporations Act 2001 so that licensees and authorised representatives are required to disclose in the Financial Services Guide the nature of their remuneration (i.e. whether salary, commission, etc.) but are exempted from the requirement to disclose details (i.e. quantum) of commissions on risk insurance products in the Financial Services Guide and Statement of Advice. The present remuneration disclosure requirements for Product Disclosure Statements should be retained.

Response
The Government does not accept this recommendation.

The FSG and SoA provisions in the Act and regulations reflect the Government’s longstanding position that remuneration disclosure is a key component of the information needed to assist consumers make informed decisions which is in turn a central policy objective of the FSR framework.

The purpose of the FSG is to ensure consumers receive information, which can assist them to make informed decisions about whether or not to acquire a financial service before that service is obtained. In contrast, the purpose of the SoA is to provide more specific information in relation to the provision of a particular financial service, namely personal advice, at the time or as soon as practicable after the advice is provided.

Disclosure in the Financial Services Guide
In line with its purpose, a key element of the FSG’s required content is the disclosure of information about the remuneration (including commission) that would be received by the person providing a financial service. This ensures con-
consumers have information before the event of how, and how much, remuneration would be payable to the service provider (both directly and indirectly) in the event they proceed to receiving a financial service. The provisions in the law are consistent with the objective of providing consumers with information to assist them make an informed decision, including information to facilitate a comparison of services on offer from service providers.

The substantive legal requirements in relation to remuneration disclosure in a FSG have been in place since October 2001. Amendments to Corporations Regulations made in July 2003 do not detract from, and were intended to remove any potential uncertainty about, the operation of these primary remuneration disclosure obligations. The release in June 2003 of ASIC Policy Statement 175 Licensing: Financial product advisers—conduct and disclosure provides guidance to industry through indicating how ASIC will administer these requirements.

The Government always intended that, in line with its purpose, information about remuneration must be included in an FSG. As contemplated in paragraph 942B(4)(c) of the Act, regulations introduced in October 2001 (such as Corporations Regulations 7.7.04 and 7.7.07) deal with the level of detail and presentation of the required remuneration information. These regulations in draft form were subject to public consultation in August and September 2001.

The phrase ‘does not limit the generality’ in these regulations was intended to ensure that the level of information required to be provided was reasonable and did not result in an overbearing amount of detail being contained in a FSG. The regulations were amended to remove any possibility of doubt about their effect as, notwithstanding the intent of section 942B of the Act, some industry members took the view that this phrase allowed information about remuneration to not be disclosed, beyond the fact that a generic form of remuneration would be received. This interpretation was a factor in the Government’s decision to amend these regulations in July 2003. These amendments were subject to public consultation in June and July 2003.

Nevertheless, the operation of the law should not result in a need to provide an onerous amount of information concerning remuneration in the FSG. The Government notes the extensive guidance provided by ASIC through Policy Statement 175. Further, the regulations provide that where a description of remuneration needs to be given, this should only be ‘to the extent relevant’ (see Corporations Subregulations 7.7.04(3) and 7.7.07(3)).

Disclosure in the Statement of Advice
The Government notes that the Committee has recommended on previous occasions that disclosure of the quantum of commission on risk-based insurance products not be required in the SoA. In making this recommendation once again, the Committee majority report has accepted the importance of disclosure for consumer protection. It also acknowledged that evidence addressing the issue of whether there is a link between commission, self-interest and consumer detriment tended to be anecdotal (see paragraph 3.18 of the Committee’s Report). Nevertheless, the report of the Committee majority appears to have relied on the anecdotal evidence of those opposed to commission disclosure to formulate its position.

In particular, the Committee majority seems to have accepted the claim that commission disclosure will inevitably result wholly in a move from ‘up-front’ to ‘level’ commissions. The Government understands that it has not been the experience in relation to other types of financial products that disclosure of commissions has resulted in the demise of up-front commissions. Similarly, the Government feels that the Committee majority has too readily accepted the claims of opponents of commission disclosure regarding the effect on the income of advisers.

The Government continues to hold to the view that the consumer protection benefits of the FSR commission disclosure requirements justify their uniform application across all financial products, including insurance products, whether they be risk or investment based, or a combination of the two. It does not accept the argument that disclosure of commissions on risk-based products is too complex for consumers to understand and/or may lead them to make poor choices. It also does not accept the proposition that disclosure will result in the type and scale of change to remuneration
structures and commission levels suggested by those opposed to disclosure.

The Government notes that broadly comparable commission disclosure requirements have been in place for some considerable time in relation to the pre-FSR securities dealers’ licensing regime without encountering the difficulties cited by opponents of disclosure.

It also notes that insurance advisers currently have an obligation to inform clients of their commission payments, which arises in the case of insurance agents and brokers if the client requests this information, and requires that they have the means to meet such requests. The Government is not aware of any arguments that insurance agents and brokers are unable to comply with requests to disclose their commissions under existing requirements. Thus, the argument that the FSR requirements that commission be disclosed without the need for a request from the client will be too difficult and/or complex to comply with suggests that such advisers presently cannot—and perhaps do not—meet the requirements of existing law and industry codes.

Recommendation 4

The Committee recommends that the Government review and report on the extent and likely effect of consolidation and restructuring in the financial sector to determine its effect on the delivery of risk insurance services in metropolitan and regional Australia. The review should place emphasis on:

- whether there is sufficient competition in the industry to promote outcomes that are beneficial for consumers in terms of:
  - the quality of risk insurance advice (taking into account issues of adviser independence and expertise);
  - availability of face-to-face risk insurance advice;
  - product diversity;
  - services including claims handling; and
  - price;
- the role and viability of small risk insurance businesses; and
- whether increasing numbers of ‘tied’ advisers or the increasing use of direct selling are adversely affecting the quality and independence of advice available to consumers.

The report should formulate a remedial program to correct any identified areas of market failure.

Response

The Government does not accept this recommendation.

The Government acknowledges the importance of the issues mentioned in the recommendation. It does not, however, accept that they are directly relevant to the introduction of the FSR Act and sees no present need for a review such as that suggested. Having said that, the Government will closely monitor the impact of the new regulatory framework across the whole of the financial services sector (not only risk insurance businesses) to ensure that its objectives are achieved, including that its consumer protection benefits are fully realised.

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Government Response to Report 52 of the Joint Standing Committee on Treaties

Singapore—Australia Free Trade Agreement (SAFTA)

Recommendation 1:

That, in recognition of the concerns held by members of the Australian public and non-government organisations, there be an opportunity for greater public involvement, specifically including local government, in the consultation process leading up to the first review of SAFTA.

The Government will ensure that local government bodies and other relevant stakeholders, particularly State and Territory governments, are consulted on the incorporation of reservations covering regional (State, Territory and local) government measures to the principal obligations in the chapters on Trade in Services and Investment. Incorporation of these reservations will be the main item requiring additions or modifications to the Treaty that will be considered at the first review of SAFTA.

MARPOL 73/78: Annex IV—Regulations for the Prevention of Pollution by Sewage from Ships (revised)
Recommendation 4:
The Committee recommends that the role of the Committee be recognised by ensuring that, unless notice or reasons are provided, the Committee conclude its review of proposed treaty actions prior to the introduction of any enabling legislation.

The Government acknowledges the Committee’s concern and its role in the treaty process and will make every effort to ensure that the Committee has due time to consider all treaty actions before the relevant implementing legislation is introduced. The Government notes, however, that in the national interest, this may not always be possible. It remains open for Parliament to delay considering such legislation until the Committee has reported.

The Government notes that the Committee intends to write to all Ministers drawing their attention to its concerns. The Department of the Prime Minister and Cabinet will follow these letters with advice to portfolio Legislation Liaison Officers about treaty enabling legislation.

DOCUments

Auditor-General’s Reports
Report No. 53 of 2003-04


PARLIAMENTARY ZONE
Proposal for Works

The DEPUTY PRESIDENT—In accordance with the provisions of the Parliament Act 1974, I present a proposal by the Department of Parliamentary Services for works within the Parliamentary Zone, together with supporting documentation, relating to projects to enhance the security around Parliament House.

Senator HILL (South Australia—Minister for Defence) (3.30 p.m.)—by leave—I give notice that, on Monday, 21 June 2004, I shall move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the Department of Parliamentary Services to enhance the security around Parliament House.

Senator BROWN (Tasmania) (3.31 p.m.)—by leave—I have not seen that proposal; I presume it relates to the white plastic defences.

Senator Mackay—He is only giving notice so we can talk about it later.

Senator BROWN—Yes, but I notice that the time frame is very short—the 21st. I hope that the proposal involves feasible and prudent alternatives so that we actually have options to debate on this matter rather than just a single proposal with no options canvassed and not the homework done that should be presented to parliament. It is going to potentially be a long-term change to the whole ambience of this place, which may well be avoided by other security measures.

The DEPUTY PRESIDENT (3.32 p.m.)—This is a little unusual but, Senator Brown, as a member of the Joint House Committee I can advise you that yesterday there was a briefing of the Joint House Committee and senators and members as per invitation on this very issue. It might assist you to seek out the briefing that was given yesterday. I understand it will be available on the website shortly. I am not trying to enter into the debate; I am just trying to assist you as to where you might look.

COOPERATIVE RESEARCH CENTRES
Return to Order

Senator HILL (South Australia—Minister for Defence) (3.33 p.m.)—by leave—This statement is on behalf of the Hon. Peter McGauran MP, Minister for Science. The order arises from a motion moved by Senator Brown and as agreed by the Sen-
ate on 15 June 2004 and relates to the provi-
sion of documents relating to the Coopera-
tive Research Centres program and certain
Australian Greenhouse Office briefs. I wish
to inform the Senate that in relation to the
CRC program I have interpreted paragraphs
(a) and (c) of the Senate order to refer to the
current 2004 selection round.

In relation to paragraph (b), no applica-
tions have been approved for funding at this
stage of the current selection round. In rela-
tion to paragraphs (d) and (e) the documents
were requested from the Australian Green-
house Office. The Hon. David Kemp MP,
Minister for the Environment and Heritage,
has provided the following response in rela-
tion to those documents:
One of these documents falls within the classifi-
cation of cabinet in conference and in line with
long-standing practice is exempted from tabling.
The other document contains information pre-
pared to assist ministers in the deliberative proc-
ess of government. In accordance with estab-
lished practice those portions of the material that
relate to these processes have been deleted from
the document I table today.

I wish to table the following documents as
required by the Senate order: (a) a list of all
of the proposals submitted for funding under
the Government’s Cooperative Research
Centres program, including the amount of
funds sought; (c) a list of all proposals which
the CRC selection committee rejected and
the reasons for rejecting them; and (d) AGO
Brief 2003/(EA Sub 2897), Options for Sup-
port of the Australian Photovoltaic Industry,
dated 12 December 2003, sent to the Minis-
ter for the Environment and Heritage and the
Minister for Industry, Tourism and Resources
by Gerry Morvell, and a list of applications in
the 2004 CRC selection round and funding
sought identifying those that were unsuccess-
ful in stage 1 and reasons. I table the docu-
ments I have referred to.

Senator BROWN (Tasmania) (3.35
p.m.)—by leave—I move:

That the Senate take note of the statement.
I thank the minister for the documents which
have been forthcoming today. It is no small
matter. I would have thought that there
would be no impediment to all of the docu-
ments requested being tabled today. These
documents are about the funding of coopera-
tive research centres for a number of matters
in Australia, not least into renewable energy
and alternative energy for such things as
gosequestration. All the documents should
be on the public record. I will have a look at
the documents; I am glad they are on the
public record. I will also look at the docu-
ments which the minister has not tabled. He
says that they are either protected under
cabinet-in-conference or for some other rea-
son should not be put before the public gaze.
I frankly cannot think of an excuse for this
withholding of documents. I will look at
them and consider the matter over the next
few days and report back to the Senate as to
whether further action should be taken to
obtain those documents.

Question agreed to.

BUDGET
Consideration by Legislation Committees
Reports

Senator LIGHTFOOT (Western Aus-
tralia) (3.37 p.m.)—Pursuant to order and at the
request of the chairs of the respective com-
mittees, I present the reports of the Econom-
ics and Employment, Workplace Relations
and Education Legislation Committees on
the 2004-05 budget estimates, together with
the Hansard records of proceedings.

Ordered that the reports be printed.
OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) AMENDMENT (EMPLOYEE INVOLVEMENT AND COMPLIANCE) BILL 2002

Report of Finance and Public Administration Legislation Committee

Senator LIGHTFOOT (Western Australia) (3.37 p.m.)—On behalf of the Chair of the Finance and Public Administration Legislation Committee, Senator Mason, I present the report of the committee on the Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

COMMITTEES

Membership

The DEPUTY PRESIDENT—The President has received letters from party leaders seeking variations to the membership of certain committees.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (3.39 p.m.)—by leave—I move:

That senators be discharged from and appointed to committees as follows:

Select Committee on the Administration of Indigenous Affairs—

Appointed: Senators Heffernan, Johnston, Nettle, Ridgeway and Scullion

Community Affairs Legislation Committee—

Appointed, as a substitute member: Senator Sherry to replace Senator Denman for the committee’s inquiry into the Family and Community Services and Veterans’ Affairs Legislation Amendment (Income Streams) Bill 2004.

Economics Legislation Committee—

Appointed, as a substitute member: Senator Cherry to replace Senator Murray for the committee’s inquiry into the Superannuation Budget Measures Bill 2004 and 2 related bills.

Question agreed to.

CORPORATE LAW ECONOMIC REFORM PROGRAM (AUDIT REFORM AND CORPORATE DISCLOSURE) BILL 2003

In Committee

Consideration resumed.

(Quorum formed)

The CHAIRMAN—The question is that Democrat amendment (1) on sheet 4214, revised, be agreed to.

Senator MURRAY (Western Australia) (3.42 p.m.)—The government and the opposition have made their views plain on my amendment. Essentially, in summary, the government like the intent and the thinking behind (1)(a) but find that they cannot support it for various reasons. The ALP feel similarly—but probably a bit more warmly towards (1)(b) as well—and, again, find that they cannot support it for various reasons as expressed by them. The only reason I want to rise to my feet before taking the vote is that the minister at the table, Senator Ian Campbell, in his remarks earlier said that the word ‘patronage’ is not understood in statute and is difficult to define. I indicate that there is a precedent. The precedent is in the Australian Federal Police Act 1979, part VI—Miscellaneous. It has the absolutely delightful heading—Senator Conroy, please note this for the future—‘Prohibition of patronage and favouritism’. It says:

The Commissioner, or a delegate of the Commissioner, in exercising powers under this Act:

(a) in relation to the engagement of AFP employees; or
(b) otherwise in relation to AFP employees; must do so without patronage or favouritism.

That puts to bed the idea that the Corporations Law could not include a similar prohibition. However, having said that, I very much doubt that it will influence the view of the government or Labor as to my amendment. So I put the amendment and await the response.

Question negatived.

Senator CONROY (Victoria) (3.45 p.m.)—The next block of opposition amendments relate to audit and financial reporting. Labor welcome many of the proposed reforms relating to audits and financial reporting in the CLERP 9 bill. We are particularly concerned about the provisions in relation to non-audit services and cooling-off periods. We are also disappointed that the bill fails to address the use of aggressive accounting techniques, an issue specifically raised by Justice Owen in the HIH Royal Commission report.

I want to start by discussing aggressive accounting techniques. I believe that shareholders are entitled to know when management is applying aggressive accounting techniques. In his report, Justice Owen said that in relation to the acquisition of FAI a certain accounting treatment was said to be in accordance with mandatory accounting standards. Yet evidence before the royal commission suggested that on an alternative view of the same accounting standards the item should have been recognised as an expense. This would have resulted in HIH reporting substantial operating losses. This goes to the heart of whether or not management can lean on an auditor to get the treatment they want—basically to smooth the profit flows and make management look better than they should. That is what is at the heart of this debate. This example illustrates the importance of an auditor disclosing alternative accounting treatments where the difference between them is material. What I mean by material is: if it can take you from a profit to a loss depending on the type of treatment. That is the issue these amendments deal with.

What I find frustrating in this debate is that whenever I talk privately to auditors and accountants, they say: ‘That company really pushes the envelope. They’re really aggressive in their accounting interpretations.’ It is clear that everybody understands, in a private sense, when someone is pushing the envelope. But when it comes to getting people on the public record—and we have had these experts from the industry before us at parliamentary committee hearings—to ask them what an aggressive accounting treatment is, everybody has amnesia. Nobody wants to say on the public record what an aggressive accounting technique is. Talk to them privately and they will give you a list. They have got no problems telling you: ‘This goes on all the time. That was pushing the envelope.’ But you will not get a word out of any of them on the public record. It is very frustrating.

How do we get around this? No-one wants to point the bone. They are all afraid to break the cone of silence, to blow the whistle, because there will be ramifications. How do we fix it? Let us make it mandatory to disclose. Let us say that if management want to treat a particular transaction in a particular way, but there are alternative treatments and the auditor has an alternative view, then let us have that on the table. That way shareholders are able to do two things: they are able to judge the integrity of the management and they are able to ask why management is leaning on the auditor to get a process, standard or interpretation adopted? They can make a judgment about whether or not the company’s reports are accurate and fair. Ultimately, it is their money being invested in
these companies and they are entitled to know whether or not there is funny business going on in the way these things are accounted for. The most critically important reason why this amendment should be adopted is that it will restore the link between auditors and shareholders. At the moment it is clear from all of the evidence we have seen that auditors believe the people they owe allegiance to are those in management. Notwithstanding the way the Corporations Law is meant to work, auditors are appointed or elected—however you want to describe it—by the shareholders.

We want to send a clear message to the auditing profession. We want to tell them: ‘The people you owe your allegiance to are the shareholders. If management tries to lean on you, we want you to stand up, report it and take questions on this from your shareholders because ultimately the shareholders decide who runs the company and who should audit the company.’ This will give power to the auditors to resist management, but most importantly it will give power to the shareholders to deal with auditors who will not stand up on behalf of shareholders, who will not blow the whistle and say, ‘No, we’re not prepared to cop that particular accounting treatment.’ That is what we need. We need to give power to the shareholders, but shareholders will not be able to deal with this unless they are told about it.

What is the secret? Let us lift the veil on these accounting secrets so that the shareholders who understand these issues can say: ‘Just a minute. Why did you adopt that accounting treatment? If you hadn’t, it would have given a very different figure.’ Shareholders are entitled to know that because if they then make a decision to either increase or decrease their investment in that company then they are informed. That is what this amendment is about and I hope it is adopted. I appreciate Senator Murray had an alternative way of trying to get to some of these issues and Labor did not support it. I am hoping Senator Murray will support this amendment.

In relation to non-audit services—

Senator Murray—Can amendment (16) be put first, because that is a distinct area, and then the others be put together?

The CHAIRMAN—I was going to ask Senator Conroy for clarification as to what he intended to move.

Senator CONROY—I intend to move amendment (16) separately.

The CHAIRMAN—And then you will move amendments (17) to (20) and (23) together?

Senator CONROY—Yes. I move:

(16) Schedule 8, page 230 (after line 22), after item 15, insert:

15A After subsection 308(1A) Insert:

(1B) An auditor who audits the financial report for a financial year must report to members on:

(a) The impact of the position taken by the reporting entity where alternative accounting treatments are reasonably open from the reading of an accounting standard and the difference is material; and

(b) Significant matters arising in the audit process.

Senator MURRAY (Western Australia) (3.52 p.m.)—I appreciate the minister may need a little more time to be briefed, so I will speak to the amendment. The original Labor amendment—and perhaps Senator Conroy can confirm this—was constructed prior to the Parliamentary Joint Committee on Corporations and Financial Services CLERP report Part 2: Financial reporting and audit
The Committee recommends that the Bill should insert a definition of ‘true and fair view’ into the Corporations Act 2001 to clarify that its purpose is to ensure that the financial reports of a disclosing entity or consolidated entity represent a view that users of the reports ... would reasonably require to make an informed assessment of matters such as investment in the entity or the transaction of business with the entity.

Recommendation 3 states:

The Committee recommends that where alternative accounting treatments are possible in an accounting standard, and where the alternative/s not selected could have resulted in the company recording a loss for the financial year, or substantial losses rather than gains, or have materially affected its solvency, then the reason for the choice of the more favourable alternative over the less favourable alternative must be disclosed by the external auditor.

Senator Conroy, that is a far better recommendation than the one you have put before us. The question I asked through the chair, which you might have missed, was whether your amendment was designed prior to the committee report coming out, because the substance of recommendation 3 is more focused, more precise and I think better determinable than the amendment you have suggested.

I suggest to Senator Conroy that, if he were to withdraw amendment (16), which is before us now, and redraft it with recommendation 3 in mind, the Democrats would be far more disposed to support it. I point out that, to the best of my knowledge, the Democrats and the Liberal Party members on the committee supported recommendation 3 and so did the Labor Party. It would seem a waste, frankly, if you were to put, with respect, an inferior amendment to that which the committee was suggesting.

Senator CONROY (Victoria) (3.56 p.m.)—I think we were perfectly comfortable with the recommendation of the joint parliamentary committee. I think this one is broader and has a better coverage than the one in the joint parliamentary committee report. It was quite narrowly focused and only dealt with companies that got themselves into a bit of trouble. I am looking to have a much broader approach. The one you are referring to, I agree, is a good amendment and gets right down to dealing with some facts, but only in a limited number of cases. I have no difficulty with the amendment you are referring to. I am hoping to capture a much broader range of transactions than potentially would be captured in the joint parliamentary committee recommendations. I would like to pursue this one, but if it were unsuccessful I would not necessarily be opposed to having the other one. I think they are complementary. I do not think they necessarily cut across each other. One is in a narrow set of circumstances; the other is in a broader set of circumstances. I hope that clarifies my views on that. Hopefully, the government will also accept this amendment.

The CHAIRMAN—I call the minister.

Senator Murray interjecting—

The CHAIRMAN—Senator Murray, I have called the minister. Minister, do you want to hear Senator Murray’s response?

Senator Vanstone—I would love to hear Senator Murray’s response, but I would like to say something too.

The CHAIRMAN—I think the minister is anxious to say something. You obviously have words that will interest the minister.

Senator Murray interjecting—

The CHAIRMAN—I know how helpful you can be, Senator Murray, but the minister would like to say a few words.
Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (3.58 p.m.)—I have not had the experience of Senator Murray not being helpful. I know how helpful he can be. He is always helpful. Obviously, transparency in reporting financial matters for shareholders is critical. It affects the decisions that people make on their investments. Not everybody is rich enough to drop a lazy $1,000, $2,000, $10,000 or $50,000. Some people do not listen to advice and put all their eggs in one basket. When things hit the fan, they lose a lot. So these things are important. I think that is generally understood.

I understood what Senator Conroy and Senator Murray were saying. I think Senator Conroy was making the assumption that I did not have an interest in accounting standards. Just briefly, for his benefit, I can advise the chamber that, when we were unlucky enough to be in opposition for a long period of time, a private member’s bill in relation to accounting standards was drafted at my request. I was a bit upset that the drafter apparently thought it was Senator Bronwyn Bishop at the time who wanted it drafted.

In particular I had it done because banks were not required to follow certain accounting standards, which of course allowed the terrible disaster that hit the South Australian bank to happen—where I think $4 billion was lost in the end. You could say, ‘Well, it was taxpayers’ money or government money,’ but South Australians had to pay higher fees and charges—and probably taxes; I am not sure—for a very long period of time, in a small state, to recoup that. The particular standard related to off-balance-sheet items where there were very significant loans put out by the bank. Through the way they were structured, they were not on the balance sheet. That is how they got away with it for so long. The horror of that is it was a state bank that did it. It is not acceptable when anyone does it—it is not acceptable when the private sector does it—but it is certainly not acceptable when, in effect, a government agency does it. That bill obviously did not pass, but nonetheless the intention was there.

Another matter I would like to highlight is the importance of transparency in accounting—and I am coming back to you, Senator Murray; I have not forgotten you down there, obliterated as you are, visually at least, by the Hansard operator. In my previous portfolio I had Access Economics do some work on the transparency of state budgets because I am idealistic enough to believe that, if not the people in the front bar of the pub then at least interested parties should be able to look at a budget and see what it means. They should be able to see not just a few dollars that add up but what that money is going to purchase in this portfolio or that portfolio. They should be able to understand reports on what happened in the last year—what the government intended and what has actually happened with the money—so that, for example, lobby groups in the disability area could see what money is actually going to the disabled and whether a promise of more places for respite care has in fact resulted in more places.

Sadly the report indicated that, in many cases, the states are not good at being transparent in their accounting. In one sense, this is more fundamental than transparency in the corporate structures. What I am asking for here is transparency in accounting so that voters who want to participate in the democratic process are judging on open, honest and transparent material and are able to see whether a government has done what it said it would do. I believe there should be more of this right across government so that people can see not just dollars adding up but
what the actual outputs are expected to be and then, later in the year, what they are.

The government does not support amendment (16). I am advised that the AASB and witnesses at the hearings of the PJSC expressed the view that disclosures like this might be too complex for inclusion in the auditor’s report. Nonetheless, as a matter of policy, the government is looking to ensure that shareholders and the market generally are given relevant and useful information. Pending accounting standard AASB 101—which will require the preparers of financial statements to disclose key decisions that are fundamental to the accounts—will require disclosures broadly along the lines of those proposed by these amendments.

Senator MURRAY (Western Australia) (4.03 p.m.)—The Democrats will not be supporting your amendment (16), Senator Conroy. If, however, you were to come back after the dinner break with a substitute amendment which put the thrust of the PJSC’s recommendation before us then we would support that.

Senator CONROY (Victoria) (4.04 p.m.)—Thank you for that suggestion, Senator Murray. I stand admonished by Senator Vanstone’s last contribution; clearly she is someone who has followed this debate extensively. I was hoping she would stay to match her rhetoric with some substance here in the chamber, but I see that Senator Kemp has ably taken over. I know she will be well represented in her absence. We are looking forward to your breaking that duck you scored at question time, Senator Kemp.

Senator Kemp—The big guns are coming in!

Senator CONROY—Well, let us not get carried away. I think we have probably said all we need to on this amendment and can now move on.

Question negatived.
(b) the company, auditor, or service is exempted by ASIC from the provisions of subsection (11AA).

(18) Schedule 1, item 91, page 43 (line 16), omit "The", substitute "Where (11AB) applies, the".

(19) Schedule 1, item 95, page 82 (line 1), omit "2", substitute "4".

(20) Schedule 1, item 95, page 82 (line 20), omit "2", substitute "4".

(23) Schedule 2, item 2, page 137 (after line 31), after paragraph 295A(2)(c), insert:

- the company's risk management and internal compliance and control system implements the policies adopted by the board; and
- the company's risk management and internal compliance and control system is operating efficiently and effectively in all material respects; and

Labor believes that certain non-audit services threaten the independence of the auditor. Even ASIC took this position in November 2002. In ASIC's original submission on the CLERP 9 policy paper, they said:

... the provision of some non-audit services will always, or almost always, threaten the independence, or the appearance of independence, of auditors, regardless of the safeguards adopted ... ASIC considers that the best approach is to prohibit the provision of such non-audit services through the Act, rather than through the ethical rules of the professional bodies.

I endorse those sentiments. To protect auditor independence, certain non-audit services must be prohibited. The Institute of Internal Auditors, the Australian Shareholders Association Ltd and the Australian Council of Super Investors all agree. The US has taken this approach. Many Australian companies already have to comply with the Sarbanes-Oxley Act in the US.

As I mentioned earlier, I met with Senator Sarbanes last week in Washington. He is very confident that the moves they have made in the US have cleaned up a lot of the problems that emerged, and Australian companies are being drawn into that US regulation. So is it surprising that when we see, as in that last amendment, a choice between giving the industry and the auditors what they want and giving the shareholders the power to have their will prevail—when the auditors argue, 'Just trust us; our integrity is unquestionable'—this government takes the side of the auditors against the shareholders? It is no surprise.

Just recently, US SEC Commissioner Roel Campos justified the more stringent audit requirements in the US by saying that it was a privilege for companies to raise capital in the US and access the low cost of capital and liquidity that exists there. I say it is also a privilege for companies to raise capital in Australia, and we should have the highest possible standards. Yet the Howard government has chosen to take the soft option in relation to non-audit services. Self-regulation of non-audit services is the approach taken by this government. This self-regulatory approach is not in shareholders' best interests. It is time to strike out for shareholders; it is time to give shareholders some confidence that auditors are independent and that they are not being influenced by other business.

It was perfectly clear—every single witness, even those who oppose this, came before our committee and accepted it with something like valuation. If you were the auditor of the company, could you audit a valuation done by your own company? Every single witness basically said no. So we ask: what is the problem with banning it so that you cannot provide valuation services if you audit? You say it should not be done, you say it would be unethical, so let us ban it. That is what this amendment does, but I
suspect the government will oppose it. It is another victory for the auditors over the shareholders, courtesy of this government.

Labor’s other amendments implement Justice Owen’s recommendation that four years is an appropriate cooling-off period before audit partners can join their former clients. The government has flip-flopped on this issue and has changed it from a two-year period in the original consultation paper to a four-year period in the draft bill. But, following industry pressure, who does the government side with—Justice Owen, who conducted a royal commission, took expert evidence and came up with his four-year recommendation? No. It sides with the audit profession yet again. In our view, Justice Owen is correct when he says that a two-year cooling-off period might not be sufficient to arrest a reasonable apprehension that former partners retain an influence over members of the audit team. It is very simple, very clear.

What is worse is that Treasurer Peter Costello went on national television the night Justice Owen’s report was released and said, ‘We will implement every single one of Justice Owen’s recommendations.’ What happens when we get here a year later? The dust has settled a bit and the industry have had a bit of a fight-back, have come in and done a bit of lobbying—not that it is too hard to lobby this mob to protect auditors and the big end of town—and the government has caved in to the pressure. Peter Costello’s word means nothing. He made a commitment to the Australian public. He said, ‘We will implement every single one of Justice Owen’s recommendations.’ Well, here we have it in clear black and white: the chance to keep the Treasurer’s word to the Australian public. The pressure is on, Senator Kemp, to keep the Treasurer’s word.

Our next amendment proposes that section 295A of the bill require CEOs and CFOs to provide a sign-off in relation to the financial statements. The CEO-CFO sign-off is recommended in the ASX corporate governance guidelines, and those guidelines are wider than those proposed by the CLERP 9 bill. Under the guidelines the certification extends to the internal compliance and control procedures which implement the policies adopted by the board. This requirement is an important component of the certification. Whether the internal systems are sufficient is a key factor in the integrity of information which is funnelled up through an organisation to the board. Labor takes the view that the certification under the Corporations Act should also extend to internal procedures.

If Labor’s amendments are not accepted by the government, we will have a situation where listed companies have an obligation under the Corporations Act which is inconsistent with, and at a lower standard than, that in the ASX corporate governance guidelines. You have got to say, based on track records, if companies have got a choice between the mandatory lower standard of the Corporations Act or the Australian Stock Exchange’s higher standard guidelines, we know which one they are going to take. They will take the low road. Here is a chance to back up the Stock Exchange and to back up what is needed to clean up these dodgy reports produced by companies. I urge the government: deliver on the promises of the Treasurer. I call on the Democrats to support the amendments.

Senator MURRAY (Western Australia) (4.13 p.m.)—I know we are dealing with amendments (17), (18), (19) and (20). Are we dealing with amendment (23) at the same time?

The TEMPORARY CHAIRMAN (Senator Hutchins)—We are.

Senator MURRAY—These amendments relate to three discrete areas and I would like...
to deal with them on that basis, but I do not mind them being voted on together. The first discrete area, which absorbed the bulk of the time Senator Conroy gave to these amendments, concerns the prohibition of non-audit services—black-letter law without doubt, prescriptive law without doubt. I think Senator Conroy’s logic, whilst not impeccable, is clear and precise. But I fear that we get into this situation simply because we have started from the wrong premise. I have exposed as fully as I can the arguments that lie behind my premise in my minority reports and my supplementary remarks on the committee’s bills. Essentially, Senator Conroy’s amendments are based on the premise that the system will not change—that the method of electing directors, the relationship between auditors and shareholders, and the way in which the company constitution and the institutional structure of the company carry on will remain the same—and that, therefore, if they remain the same, you have to do something about the independence issue through this route.

Our view, in contrast, is that you would not need any of this if auditors were appointed independently. So we have put forward the proposition that one mechanism to do that would be through the corporate governance board elected by shareholder, not shareholding. The shareholding method of electing a main board at present allows dominant shareholders to appoint the directors, who are therefore subordinate to the patronage of dominant shareholders; and those directors appoint the auditor. There is a patronage line all the way through and, consequently, you have no independence in that relationship. So the only way to put some independence back in is to prescribe a whole lot of areas that they may not deal in. That is why I say the logic is consistent, clear and follows very much an understandable route; but if they were appointed on a basis whereby they were entirely independent, you would not need to worry about prescriptive law.

The other alternative we have put forward as an idea—and we know it is an awkward one—is that appointment be made from a roster constructed by ASIC. Once again, the government, the Labor Party and the business community will not come at that. In my view it is basically because the sorts of people who advise them and are trained in these matters tend to lack an ability to think more laterally and more imaginatively. They seem to think the way we do things is the way we should always do things. What we are left with is a lot of prescriptive black-letter law proposals. I am a little uncomfortable with this route, because I would prefer my route. However, in the absence of my route or something along those lines you are going to have to go down Senator Conroy’s route eventually, because there is no other way in which you can stop the cross-subsidisation of audit services and non-audit services or the patronage and favour that results from being able to offer people extremely lucrative non-audit services and doing a bit of nodding and winking in favour of the dominant shareholder and the executive and non-executive directors by the way. I say what I say advisedly. I have no option but to support Senator Conroy’s amendment because of the logic of the opposition’s position. It is second best—and I do not mean that rudely; I just think there is a different way to do things. So that is where we will be on that.

We then move to amendments (19) and (20), which substitute the years that the government has chosen with the years that the royal commission has chosen. I have never quite understood why a shorter version was chosen by the government—and the committee process did not properly elucidate that—and until such time as I can understand why it should be shorter I think I am obliged,
again, to run with the consistency of Senator Conroy’s proposition.

The third discrete area to discuss is amendment (23). That is an absolutely fascinating amendment. Senator Conroy, I do not think you quite realise just what an innovation this is and just what an astonishing step forward amendment (23) is in terms of audit practice in this country. I say that based on my experience of the Auditor-General and the Joint Committee of Public Accounts and Audit. All the excitement in audit these days is in performance audits, not in financial audits, because that is the area where you assess risk, where you assess the unknown and where you assess the future. The basis of a financial audit is to tick off the past and to establish that what has happened in the past and the way it has been reported and recorded is accurate and that you can rely on it thereafter to sell assets, distribute profits or whatever it is you want to do with the assets of a company. The public sector leads the country in its emphasis on performance audits. The private sector, in contrast, almost invariably just has financial audits—which, incidentally, are cheaper to do than performance audits, which are more difficult.

So I will put a compliment your way, Senator Conroy and your adviser. This little initiative is a really sweet one because it specifically goes to risk and it specifically goes to compliance and control systems interacting with that risk. I am quite sure the government will pop up and find some reason to say no, but I would suggest to you that this is an initiative which deserves further exploration at some future date. We certainly will be supporting it this time round.

Senator KEMP (Victoria—Minister for the Arts and Sport) (4.21 p.m.)—The government will not be supporting these amendments. I was somewhat struck by Senator Conroy’s concern for shareholders.

This will give a horse laugh out in the wider community, given what the Latham-led Labor Party is attempting to do to business. People are not listening to this broadcast, but there may be some who are tuned in to the Internet and they would know the many adverse decisions that the Latham-led Labor Party is making which will impact on business. I do not blame Senator Conroy for this. Nothing I say should be seen to be attacking Senator Conroy, because Senator Conroy is really like a lone Collingwood supporter in the Robert Heatley Stand at the Carlton Football Ground in relation to Labor Party policy making at the moment.

From time to time, Senator Conroy does make sense—that is true. He has not made sense today. I think Senator Conroy has attempted to understand the business community but he is having no influence, and I think that is a pity. From my point of view it would be a great thing if Senator Conroy could moderate the extremist pro-union policies that the Labor Party is adopting. I think that probably events have passed Senator Conroy by. If you look at a lot of the business initiatives that the Labor Party is now talking about—for instance, the free trade agreement—Senator Conroy in the Labor Party is like that Collingwood supporter in the Robert Heatley Stand.

On this issue I think Senator Conroy tries to speak of behalf of shareholders. The Labor Party never speaks on behalf of shareholders—that is the truth. The Labor Party is a trade union party and is committed to taking its orders from the trade union movement. It is a disappointment, I have to say. I think we would do well to listen to Senator Murray on this. He is one that I listen to. Sometimes Senator Murray comes down on my side of the fence and sometimes he does not. This time he has argued articulately but not convincingly, and we will not be accepting Senator Murray’s views either on this.
Senator Conroy referred to his recent trip to America. It was good that he had a break. It has been a big year and it is going to be an even bigger year. He drew our attention to a US senator. My advice, Senator Conroy, is that the US Sarbanes-Oxley approach of selective prohibition may be really problematic in the Australian context. It is a smaller market in Australia, with only four to six major accounting firms. What may work in America may not work here. It is possible that the US senator gave Senator Conroy the advice that he did, but he was referring to the US market, not to the Australian market. It is a bit of a worry to see Senator Conroy slavishly following the US on this particular issue.

We believe that the disclosure based approach is preferable to the US style prescriptive approach of selective prohibition. My advice is that there is no evidence in Australia of any specific link between corporate failure and the provision of non-audit services to warrant prohibition. The parliamentary Joint Committee on Corporations and Financial Services—the Chapman committee—was not satisfied on the evidence that a blanket ban could be justified and the committee did not favour a selective legislative approach because of the likelihood that it might be overinclusive or underinclusive and fail to accommodate instances where the threats posed by self review might be non-existent.

Items (19) and (20) of the ALP amendments propose to amend sections 324CI and 324CJ to require a four-year cooling-off period. The two-year cooling-off period required by the bill is based on the Ramsay report and is preferable, in our view, to a four-year cooling-off period. A four-year cooling-off period is excessive and my advice is that it is far out of line with international best practice in this area. The US has one year, and the European Commission and the UK have adopted two years. The Australian Labor Party in its wisdom—or lack of wisdom—has adopted four years. In our view, the four-year ban is quite inappropriate in Australia’s comparatively smaller market and would negatively impact on the capacity of many Australian companies to obtain financial expertise from leading audit firms to fill board and senior management positions.

Finally, Senator Conroy discussed item (23) of the ALP amendments. In brief, these amendments will require the chief executive officer and chief financial officer of a company to sign off on the company’s risk management and internal compliance and control systems. The advice that I have received—and I think this would give a lot of comfort to the Senate—is that this is covered by the ASX Corporate Governance Council guidelines.

Senator CONROY (Victoria) (4.27 p.m.)—I think I did make that point of myself, and this is a chance to assist the corporate governance guidelines. I will just respond very briefly to Senator Murray because Senator Murray’s intentions are always honourable in this area. We have discussed it previously. I am an optimist—and I know that you would never like to be described as a pessimist, Senator Murray—and I am optimistic that we can make this system work. You have probably given up on it and you think that it is fundamentally broken—in what I would describe as a pessimistic view—and therefore you probably believe that we need to go to a completely different model. But I retain my degree of optimism that we can make this system work. I appreciate your indications of support for the amendments. It is no surprise to find this government siding with the big end of town against the shareholders. This is what these choices are throughout this debate. Whom are you going to back: the big end of town, the corporate boards, or shareholders? This
government will stand condemned because, as we are now seeing, amendment after amendment and vote after vote it will always side with the big end of town.

Question agreed to.

**Senator SHERRY** (Tasmania) (4.29 p.m.)—Apparently this morning there was a conflict between government amendments and a Labor amendment. To overcome this conflict we have amended Labor’s amendment (22), and now the new government provisions are included in Labor’s table, so there is now no conflict. That is my understanding.

**The TEMPORARY CHAIRMAN** (Senator Hutchins)—That is our understanding.

Senator SHERRY—by leave—I move Labor’s amendment (21), revised amendment (22), amendments (24), (25) and (32) to (34):

(21) Schedule 1, page 100 (after line 23), after item 109, insert:

<table>
<thead>
<tr>
<th>110A Schedule 3 (after table item 104)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insert:</td>
</tr>
</tbody>
</table>

| 103A | Subsection 300(11AA) | 100 penalty units or imprisonment for 12 months, or both. |

R(22) Schedule 1, item 111, page 100 (line 26), to page 102, omit the item, substitute:

**111 Schedule 3 (before table item 117)**

Insert:

<p>| 116B | Subsection 324BA | 100 penalty units or imprisonment for 12 months, or both. |
| 116BB | Subsection 324BB(1) | 100 penalty units or imprisonment for 12 months, or both. |
| 116BC | Subsection 324BB(2) | 40 penalty units. |</p>
<table>
<thead>
<tr>
<th>116FD</th>
<th>Subsections 324CG(5A) and (6)</th>
<th>40 penalty units.</th>
</tr>
</thead>
<tbody>
<tr>
<td>116GA</td>
<td>Section 324CI</td>
<td>100 penalty units or imprisonment for 12 months, or both.</td>
</tr>
<tr>
<td>116GB</td>
<td>Section 324CJ</td>
<td>100 penalty units or imprisonment for 12 months, or both.</td>
</tr>
<tr>
<td>116GC</td>
<td>Section 324CK</td>
<td>100 penalty units or imprisonment for 12 months, or both.</td>
</tr>
<tr>
<td>116H</td>
<td>Subsections 324CM(1), (2), and (3)</td>
<td>100 penalty units or imprisonment for 12 months, or both.</td>
</tr>
<tr>
<td>116I</td>
<td>Section 324DB</td>
<td>100 penalty units or imprisonment for 12 months, or both.</td>
</tr>
<tr>
<td>116JA</td>
<td>Subsection 324DC(1)</td>
<td>100 penalty units or imprisonment for 12 months, or both.</td>
</tr>
<tr>
<td>116JB</td>
<td>Subsection 324DC(2)</td>
<td>40 penalty units.</td>
</tr>
<tr>
<td>116KA</td>
<td>Subsections 324DD(1) and (2)</td>
<td>100 penalty units or imprisonment for 12 months, or both.</td>
</tr>
<tr>
<td>116KB</td>
<td>Subsection 324DD(3)</td>
<td>40 penalty units.</td>
</tr>
<tr>
<td>116LA</td>
<td>Subsection 327A(5)</td>
<td>100 penalty units or imprisonment for 12 months, or both.</td>
</tr>
<tr>
<td>116LB</td>
<td>Subsections 327B(1) and (3)</td>
<td>100 penalty units or imprisonment for 12 months, or both.</td>
</tr>
<tr>
<td>116LC</td>
<td>Subsection 327C(3)</td>
<td>100 penalty units or imprisonment for 12 months, or both.</td>
</tr>
<tr>
<td>116MA</td>
<td>Subsection 328A(4)</td>
<td>100 penalty units or imprisonment for 12 months, or both.</td>
</tr>
<tr>
<td>116MB</td>
<td>Subsection 328B(2)</td>
<td>100 penalty units or imprisonment for 12 months, or both.</td>
</tr>
<tr>
<td>116NA</td>
<td>Subsections 331AAA(1) and (3)</td>
<td>100 penalty units or imprisonment for 12 months, or both.</td>
</tr>
<tr>
<td>116NB</td>
<td>Subsections 331AAB(1) and (2)</td>
<td>100 penalty units or imprisonment for 12 months, or both.</td>
</tr>
<tr>
<td>116O</td>
<td>Subsection 342B(1)</td>
<td>20 penalty units.</td>
</tr>
</tbody>
</table>

(24) Schedule 4, item 1, page 179 (lines 5 and 6), omit the item, substitute:

1 Schedule 3 (table items 1, 30, 50, 51, 83, 90, 117, 138, 229A to 229C, 235, 240, 309B, 309C, 310A to 310C, 311A to 311C, 312A, 334 to 337)

Repeal the items, substitute:

<table>
<thead>
<tr>
<th>1</th>
<th>Section 111AU</th>
<th>400 penalty units or imprisonment for 10 years, or both.</th>
</tr>
</thead>
<tbody>
<tr>
<td>30</td>
<td>Section 184</td>
<td>4,000 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
<td>50</td>
<td>Subsection 209(3)</td>
<td>4,000 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
<td>51</td>
<td>Section 224</td>
<td>400 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
<td>83</td>
<td>Section 254T</td>
<td>200 penalty units or imprisonment for 5 years, or both.</td>
</tr>
<tr>
<td>90</td>
<td>Subsection 260D(3)</td>
<td>4,000 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
<td>117</td>
<td>Subsection 344(2)</td>
<td>4,000 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
<td>138</td>
<td>Subsection 588G(3)</td>
<td>4,000 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
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</tr>
<tr>
<td>229A</td>
<td>Subsection 674(2)</td>
<td>400 penalty units or imprisonment for 10 years or both.</td>
</tr>
<tr>
<td>229B</td>
<td>Subsection 674(5)</td>
<td>200 penalty units or imprisonment for 5 years, or both.</td>
</tr>
<tr>
<td>229C</td>
<td>Subsection 675(2)</td>
<td>400 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
<td>229CA</td>
<td>Subsection 679(1)</td>
<td>100 penalty units.</td>
</tr>
<tr>
<td>235</td>
<td>Section 726</td>
<td>400 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
<td>240</td>
<td>Subsection 728(3)</td>
<td>400 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
<td>309B</td>
<td>Section 1041A</td>
<td>400 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
<td>309C</td>
<td>Subsection 1041B(1)</td>
<td>400 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
<td>310A</td>
<td>Subsection 1041C(1)</td>
<td>400 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
<td>310B</td>
<td>Section 1041D</td>
<td>400 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
<td>310C</td>
<td>Subsection 1041E(1)</td>
<td>400 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
<td>311A</td>
<td>Subsection 1041F(1)</td>
<td>400 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
<td>311B</td>
<td>Subsection 1041G(1)</td>
<td>400 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
<td>311C</td>
<td>Subsection 1043A(1)</td>
<td>4,000 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
<td>312A</td>
<td>Subsection 1043A(2)</td>
<td>4,000 penalty units or imprisonment for 10 years, or both.</td>
</tr>
<tr>
<td>334</td>
<td>Section 1307</td>
<td>200 penalty units or imprisonment for 5 years, or both.</td>
</tr>
</tbody>
</table>

### 1A Schedule 3 (after table item 273A)

Insert:

| 273AA | Subsection 950D(3) | 1,000 penalty units or imprisonment for 1 year, or both. |
| 273AB | Subsection 950E(1) | 1,000 penalty units or imprisonment for 1 year, or both. |
| 273AC | Subsection 950F(1) | 1,000 penalty units or imprisonment for 1 year, or both. |
| 273AD | Subsection 950F(2) | 500 penalty units or imprisonment for 6 months, or both. |

(25) Schedule 4, page 186 (after line 15), after item 11, insert:

**11A Paragraph 1317E(1)(f)**

After “601FC(5)”, insert “or (7) or (9)”.

(32) Schedule 5, item 15, page 193, omit “5 penalty units”, substitute “50 penalty units”.

(33) Schedule 5, item 15, page 193, omit “5 penalty units”, substitute “100 penalty units”.

(34) Schedule 5, item 17, page 194, omit “5 penalty units”, substitute 100 penalty units”.

Amendment (22) replaces the table in the CLERP 9 bill which sets out the liability framework for auditor independence. Currently the penalties which apply for breach of the auditor liability framework range from $550 to $2,750 with a possibility of six months imprisonment. In our view, these
penalties are too low. Labor’s amendments increase the pecuniary penalties and double the jail term. Under Labor’s amendments, breach of the auditor’s liability framework will result in penalties ranging from $2,200 to $11,000.

Amendment (24) relates to serious breaches of the Corporations Act. Labor’s amendments double the current penalties for serious breaches of the act. We have increased many of the penalties from five years to 10 years and increased to five years many offences that now only carry two-year penalties. In addition, we have doubled the pecuniary penalties. Labor’s amendments increase the penalties applying to breach of the provisions relating to non-binding votes on the remuneration report. The CLERP 9 bill imposes five penalty units for a breach of the relevant provisions. This amounts to a penalty of $550. Labor’s amendments increase the penalties to start at $5,500 and rise to $11,000. In Labor’s view, a clear message needs to be sent that failure to put a non-binding vote to shareholders is a serious breach.

Senator MURRAY (Western Australia) (4.32 p.m.)—As a general proposition the opposition certainly is aware—and perhaps the government is—of our view that white-collar crimes and penalties have tended to be of a lesser order than those crimes and penalties which attach under criminal law, normally. We have consistently been concerned, especially when we look at the ASIC reports. They do very good work on getting somebody in before the courts, and the law itself provides a fairly modest penalty. We should recognise that the principle of judicial discretion means that, unless a penalty is mandated, a judge or magistrate will invariably look at a legislative penalty as a maximum. So, if you have a low amount, you end up with perhaps an even lower penalty being applied. I would think, and the mover of the amendment can correct me if I am wrong, that these penalties in fact represent maximums. They do not represent the amount which would ordinarily or automatically be applied. Therefore, if I am correct in my understanding, I think that these increases in penalties as maximums are probably warranted.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.34 p.m.)—I understand that we are dealing with amendments to increase penalties for breach of auditor independence requirements. Strict liability offences will attract a penalty of $4,400 while other penalties will be $11,000, imprisonment for 12 months or both. The bill already increases significantly the level and nature of the penalties relating to breach of the auditor independence requirements and fault based offences in relation to the general requirement. Specific requirements for auditor independence attract a penalty of 25 penalty units—that is, $2,750, imprisonment for six months or both—which is a fivefold increase of the existing pecuniary penalty. There is currently no term of imprisonment. So there is a significant increase in any event. The amendments, in the government’s view, are excessive and fail to recognise that the new auditor liability framework will provide for separate contraventions and penalties to accumulate very quickly so long as an auditor who is in breach of the provisions continues to engage in audit activity. I state this position briefly as the basis for the government not agreeing to the amendments.

Question agreed to.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.36 p.m.)—by leave—I move government amendments (77) to (84):

(77) Schedule 1, item 112, page 103 (lines 11 and 12), omit subsection 1299A(2), substitute:
(2) An application under this section:
   (a) must contain such information as is prescribed in the regulations; and
   (b) must be in the prescribed form.
(78) Schedule 1, item 112, page 106 (line 9), omit paragraph 1299F(2)(c), substitute:
   (c) be lodged with ASIC in the prescribed form.
(79) Schedule 1, item 112, page 106 (line 19), omit paragraph 1299F(4)(c), substitute:
   (c) be lodged with ASIC in the prescribed form.
(80) Schedule 1, item 112, page 106 (line 30), omit paragraph 1299F(6)(c), substitute:
   (c) be lodged with ASIC in the prescribed form.
(81) Schedule 1, item 112, page 106 (line 32) to page 107 (line 6), omit subsection 1299G(1), substitute:
   (1) A company that is an authorised audit company must, within one month after the end of:
       (a) the period of 12 months beginning on the day on which the company became registered as an authorised audit company; and
       (b) each subsequent period of 12 months;
       lodge with ASIC a statement in respect of that period.
   (1A) A statement under subsection (1):
       (a) must contain such information as is prescribed in the regulations; and
       (b) must be in the prescribed form.
(82) Schedule 1, item 113, page 109 (table item 332A, cell at column 3), omit the cell, substitute:
   5 penalty units
(83) Schedule 1, item 113, page 109 (table item 332B, cell at column 3), omit the cell, substitute:
   5 penalty units
(84) Schedule 1, item 113, page 109 (table item 332C, cell at column 3), omit the cell, substitute:
   5 penalty units
These are technical amendments that relate to the authorised audit companies. In particular, they relate to lodgment of documents and lodgment of prescribed forms. My understanding is that they are not opposed.
Question agreed to.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.37 p.m.)—by leave—I move government amendments (85) to (87) on sheet PK247:
(85) Schedule 1, item 155, page 133 (line 16), omit "After", substitute "Before".
(86) Schedule 1, item 155, page 133 (line 18), omit “or (c)”, substitute “(ab)”.
(87) Schedule 1, item 155, page 133 (line 23), at the end of paragraph (c), add “or”.
These are also technical amendments to correct anomalies in the numbering of amendments in the bill.
Question agreed to.

Senator MURRAY (Western Australia) (4.37 p.m.)—I am now about to move an amendment which will certainly go down because if it were passed it would result in lower political donations from companies than they presently give. Nevertheless, I think it is important that I push this particular boat especially since it is getting greater and greater support from the shareholding community. I recall that when I began my business career quite a few decades ago it was the practice for companies to support sporting and cultural events that either the managing director or his wife—because it always was a he in those days—liked. So, if the managing director was a supporter of tennis or if his wife liked Romanian folk dancing, you would find the company putting money into those with no regard to their sharehold-
ers; they thought it was their right. Slowly shareholders have taken the view that if you are going to spend their money there ought to be greater justification for it than simply the managing director’s view of the world. Sporting sponsorships and cultural sponsorships have become more and more focused and more and more relevant, so that where a company does back them they have a direct relationship to the company’s corporate philosophy and policy and to its goods and services range. Quite frankly, as a result more is spent now on cultural and sporting events than was ever spent when I began my business career, so it has not been a bad process.

Turning to political donations, this is a far more sensitive area. Shareholders, I am told by the various surveys, now cover about 50 per cent of Australian adults—and perhaps it might be more—both directly through direct share ownership and indirectly through investment in various funds. Those shareholders represent all points of the political spectrum. As we know from our assessment of votes, about three-quarters of the votes cast in any election go to the two major parties, Liberal and Labor, and one quarter go to others, yet publicly listed corporations quite often have a bias just to one or the other and of course unions have the same problem. The difficulty with political donations is that the purpose of them is often improper and can be corrupt, namely: to achieve influence and to be able to determine the direction and destination of a particular political party. We Democrats have long argued—and by long I mean for many years—that if registered organisations, like unions, and corporations are to make political donations then they should do so with the full authority of their members or shareholders. If those members or shareholders choose to delegate that specific responsibility to a board or to the management committee, in the case of a union, so be it, but let it be their precise and determined choice, because a corporation or a union is a democratic institution. I have mentioned unions in this discourse simply so that everyone realises that I intend to move the very same form of amendment or type of approach under workplace relations law.

Turning to the companies themselves, I note that political parties determine multibillion dollars of expenditure. The budget this year, if you add in tax expenditures, is over $200 billion. Political parties are of immense importance—they can even send people to war—and I think it is very important that the relationship of money in influencing those parties be absolutely above board. In my minority report on CLERP 9, the part I report, I took into it something I am looking at with respect to another committee I sit on, which is the workplace relations committee examining the Cole royal commission matters. That has political donations as part of its terms of reference, so I was able to produce a schedule that arises from that inquiry and transpose it here. I recognise that some of these companies are private companies, but this schedule I have put in my minority report is compiled from online AEC returns from 1998-99 to 2002-03, so it is four years worth. Just listen to the size of some of these donations to political parties: under ‘Property developers’, Croissy Pty Ltd, $1.9 million; Lend Lease Corporation, $1,173,000, if you round it off; Mirvac, $813,000 rounded; Australand Property Group, $697,000; Furama Pty Ltd, $589,000; Gandel Group, $571,000; and under ‘Builders & constructors’, Multiplex, $1.7 million; Leighton Group of Companies, $1.3 million; Meriton Apartments, over $1 million; Baulderstone Hornibrook, $748,000 rounded—and so it goes on.

You have to ask yourself: why are those people giving so much money? What is it about? They do not give it because of a love of politicians or even of politics. In the union case that may be more true, because in some
respects their hearts are more attached to their donations, but it is about buying influence. I think these matters need to be determined by shareholders. The amendment that we will move—and I can guarantee that it will go down—puts two basic propositions: either donations must be approved by shareholders or a donations policy must be approved by shareholders. The policy could simply be that the board of directors could determine it at their discretion. I do not object to boards of directors determining these matters. What I object to is that they determine these matters without regard to the shareholders’ views and wishes. Senators should note that the committee examined this matter. Recommendation 26 from the committee’s report says:

The Committee recommends that provisions be inserted in the Corporations Act that would require the annual report of listed companies to include a discussion of the board’s policy on making political donations.

That is the expert committee of the parliament saying that it is about time this stopped—that it is about time we recognised that the media concern, the community concern and our own knowledge that this is wrong requires us to give back to shareholders the power to make decisions in these areas.

I did say in my opening remarks that the consequence of this would be for donations to drop. Perhaps I am wrong. What I have noticed is that political donations have become such a serious issue in image terms for a number of companies that they are not making donations at all. If one were a believer in companies making donations, one would say that this sort of provision would enable shareholders to decide that there should be a policy of making donations and to start one up. More and more companies are now saying, ‘We will not donate at all.’ Of course, they do go to extremely expensive dinners with ministers, shadow ministers and so on, and we understand that there are other means by which money is raised. I have put this case strongly before the Joint Standing Committee on Electoral Matters, in supplementary remarks we have written through other minority reports and in various debates in this chamber. I know that everyone here understands what I am on about, so with those remarks I move:

(2) Schedule 2, Part 1, page 139 (after line 12), at the end of the Part, add:

2A After Division 8 of Part 2M.3

Insert:

Division 9—Disclosure by companies of political donations

323E Introductory provisions

(1) This Division has effect for authorising gifts and political donations, as defined in the Commonwealth Electoral Act 1918 and in this section, made by companies to political organisations.

(2) It is unlawful for a gift or political donation as defined in this section to be made by a company to a political organisation except as authorised by this Division.

(3) In this Division:

candidate means a candidate for election to the Commonwealth Parliament, a State Parliament or for a position in an organisation as defined in the Workplace Relations Act 1996.

company includes a private company and a public company as defined in section 9 of this Act.

political donation means:

(a) a gift as defined by the Commonwealth Electoral Act 1918; or

(b) a disposition of property as defined by the Commonwealth Electoral Act 1918; and

includes but is not limited to, all manner of administrative support provided for a candidate or political
party including provision of postal, telephonic and electronic and like communication facilities, photocopying, folding, binding and the like, printing and other associated facilities, all forms of advertising including canvassing and door-knocking and any form of assistance provided by the company for a candidate or political party.

_**political organisation**_ means:

(a) a _registered political party_ as defined by the _Commonwealth Electoral Act 1918_; or

(b) a _registered organisation_ as defined in the _Workplace Relations Act 1996_.

_**the relevant time**_, in relation to any political donation made by a company, means:

(a) the time when the donation is made; or

(b) if earlier, the time when any contract is entered into by the company or undertaking in pursuance of which the political donation is made.

### 323F Prohibition of political donations by companies

(1) It is unlawful for a company or an officer on behalf of a company to make any political donation to a political organisation unless:

(a) the political donation is authorised by a resolution passed at an approved general meeting by a majority of shareholders of the company before the relevant time; or

(b) the political donation is made on the authority of the company, board or management body in accordance with a donation policy which has been approved by a general meeting of the company before the relevant time.

 Penalty: in the case of an individual—50 penalty units; or in the case of a body corporate—500 penalty units.

(2) For the purposes of this section, an approval resolution is a qualifying resolution which specifically authorises the company to make donations, not exceeding in total a sum specified in the resolution to nominated political organisations, during the requisite period beginning with the date of the resolution and concluding at the expiration of 3 years after the date of the resolution, after which a further resolution is required in accordance with subsection (1).

(3) In subsection (2):

_**qualifying resolution**_ means:

(a) an ordinary resolution; or

if the directors so determine or the articles of association so require:

(b) a special resolution; or

(c) a resolution passed by any percentage of the members greater than that required for an ordinary resolution.

_**the requisite period**_ means three years or such shorter period as the directors may determine or the articles of association may require, commencing on the date of the resolution.

(4) The directors may make determinations for the purposes of subsection (3) except where any provision of the articles operates to prevent them from doing so.

(5) An approval resolution must be expressed in specific terms in accordance with subsection (2).

(6) Where a company or an officer on behalf of a company makes a political donation in contravention of subsection (1), an approval resolution of that donation at the next available general meeting by a majority of shareholders of the company operates so as to validate the donation for the purposes of this section.
(7) Nothing in this section requires approval of donations where the value of the donation is $1,500 or less.

(8) For the purposes of this section, company includes a subsidiary of the company.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.48 p.m.)—I will make a few brief remarks in response to Senator Murray. It will not be any surprise, as Senator Murray has noted, that the government will not be supporting the amendment. I want to very briefly record the reasons why. Firstly, the Corporations Act is not, in the government’s view, the appropriate regulatory framework in which to be considering this matter. In our view, issues regarding political donations would be more appropriately regulated by the current electoral legislative framework—that is, the Commonwealth Electoral Act 1918—rather than the Corporations Act. Secondly, as Senator Murray has graphically illustrated, this information is already publicly available. Information regarding political donations by companies is already publicly available from the Australian Electoral Commission and, depending on your point of view, no doubt you can draw whatever conclusions appeal to you. Thirdly, the decision by a company to donate money to political parties, or to any recipient for that matter, must primarily, I suppose, be one of a commercial nature. Unless the amount to be donated is on such a scale that it may be classified as an extraordinary transaction, it would not generally be a matter for the shareholders of the company but rather a matter for the company’s management. For those reasons, stated very briefly, the government will not be supporting Senator Murray’s amendment.

Senator SHERRY (Tasmania) (4.50 p.m.)—I also indicate that the Labor Party will not be supporting this amendment. Senator Murray may have valid concerns about political donations. We believe that, if there is to be further regulation in this area, the Commonwealth Electoral Act is the appropriate act for that. The Joint Standing Committee on Electoral Matters, with its solid credentials and work in this particular area, is the appropriate parliamentary committee to deal with what may be a valid argument by Senator Murray. We would like to see a reference to the joint electoral committee with recommendations with respect to the relevant act, which we regard as the Electoral Act, and for that reason we will not be supporting the amendment.

Question negatived.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.51 p.m.)—by leave—I move government amendments (88) to (93) on sheet PK247:

(88) Schedule 2, item 11, page 146 (lines 20 to 32), omit subsection 239BA(4), substitute:

(4) If the Chairperson gives a direction as to the sitting members, he or she may:

(a) revoke the direction and give a new direction under subsection (2) as to the sitting members; or

(b) vary the direction to replace one or more of the sitting members;

at any time after the giving of the direction and before the commencement of proceedings in relation to the matter.

(5) If:

(a) the Chairperson gives a direction as to the sitting members; and

(b) one of those persons:

(i) ceases to be a member; or

(ii) ceases to be available for the purposes of proceedings in relation to a matter;

during the proceedings or after the completion of the proceedings but before the report on the matter to
which the proceedings relate is finalised;
the Chairperson may vary the direction to replace that person at any time after the person so ceases to be a member or to be available.

(89) Schedule 2, item 11, page 150 (after line 22), at the end of section 239CC, add:
(9) The Financial Reporting Panel may revoke or vary a direction given under subsection (4).

(90) Schedule 2, item 11, page 151 (after line 15), at the end of section 239CD, add:
(5) The Financial Reporting Panel may revoke or vary a direction given under subsection (1).

(91) Schedule 2, item 11, page 152 (after line 34), at the end of section 239CG, add:
(3) The Financial Reporting Panel may revoke or vary a determination made under subsection (1).

(92) Schedule 2, item 11, page 154 (line 23), omit “The”, substitute “A member of the”.
Schedule 2, item 11, page 154 (line 25), omit “If the”, substitute “If a member of the”.

(93) Schedule 2, item 11, page 154 (line 25), omit “If the”, substitute “If a member of the”.

These amendments relate to the Financial Reporting Panel, which is a new body being established under the bill. These amendments facilitate the operation of the Financial Reporting Panel, provide for the revocation and variation of directions given by the Financial Reporting Panel and allow one member of the Financial Reporting Panel to certify relevant information to a court instead of requiring the whole panel.

Senator SHERRY (Tasmania) (4.52 p.m.)—I indicate the Labor opposition will be supporting these amendments.
Question agreed to.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.52 p.m.)—I move government amendment (94) on sheet PK247:

(94) Schedule 2, page 163, at the end of the Schedule, add:

Part 4—Content of financial reports
Corporations Act 2001
17 Subsection 45A(4)
Omit “(d)”, substitute “(b)”.

18 Subsection 295(2)
Repeal the subsection, substitute:
(2) The financial statements for the year are:
    (a) the financial statements in relation to the entity reported on that are required by the accounting standards; and
    (b) if required by the accounting standards—the financial statements in relation to the consolidated entity that are required by the accounting standards.

19 Subsection 303(2)
Repeal the subsection, substitute:
(2) The financial statements for the half-year are:
    (a) the financial statements in relation to the entity reported on that are required by the accounting standards; and
    (b) if required by the accounting standards—the financial statements in relation to the consolidated entity that are required by the accounting standards.

This amendment facilitates the introduction of international accounting standards. In particular, it removes inconsistencies between the standards and the law.

Senator SHERRY (Tasmania) (4.52 p.m.)—The Labor opposition will be supporting this amendment.
Question agreed to.
Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.53 p.m.)—by leave—I move government amendments (95) to (99) on sheet PK247:

(95) Schedule 4, item 2, page 180 (line 14), omit “services with”, substitute “the supply of services or goods to”.

(96) Schedule 4, item 2, page 180 (line 17), omit “services with”, substitute “the supply of services or goods to”.

(97) Schedule 4, item 2, page 181 (after line 29), at the end of section 1317AB, add:

(3) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied that:

(a) a person (the employee) is employed in a particular position under a contract of employment with another person (the employer); and

(b) the employee makes a disclosure that qualifies for protection under this Part; and

(c) the employer purports to terminate the contract of employment on the basis of the disclosure; the court may order that the employee be reinstated in that position or a position at a comparable level.

(98) Schedule 4, item 2, page 183 (after line 6), at the end of Part 9.4AAA, add:

1317AE Confidentiality requirements for company, company officers and employees and auditors

(1) A person (the offender) is guilty of an offence against this subsection if:

(a) a person (the discloser) makes a disclosure of information (the qualifying disclosure) that qualifies for protection under this Part; and

(b) the qualifying disclosure relates to a contravention or possible contravention of a provision of the Corporations legislation by:

(i) a company; or

(ii) an officer or employee of the company; and

(c) the qualifying disclosure is made to:

(i) the company’s auditor or a member of an audit team conducting an audit of the company; or

(ii) a director, secretary or senior manager of the company; or

(iii) a person authorised by the company to receive disclosures of that kind; and

(d) the offender is:

(i) the company’s auditor or a member of an audit team conducting an audit of the company; or

(ii) a director, secretary or senior manager of the company; or

(iii) a person authorised by the company to receive disclosures of that kind; or

(iv) the company; or

(v) any officer or employee of the company; and

(e) the offender discloses one of the following (the confidential information):

(i) the information disclosed in the qualifying disclosure;

(ii) the identity of the discloser;

(iii) information that is likely to lead to the identification of the discloser; and

(f) the confidential information is information that the offender obtained directly or indirectly because of the qualifying disclosure; and

(g) either:

(i) the offender is the person to whom the qualifying disclosure is made; or

(ii) the offender is a person to whom the confidential information is
disclosed in contravention of this section and the offender knows
that the disclosure of the confidential information to the
offender was unlawful or made in
breach of confidence; and

(h) the disclosure referred to in
paragraph (e) is not authorised under
subsection (2).

(2) The disclosure referred to in paragraph
(1)(e) is authorised under this
subsection if it:

(a) is made to ASIC; or

(b) is made to APRA; or

(c) is made to a member of the
Australian Federal Police (within
the meaning of the Australian
Federal Police Act 1979); or

(d) is made to someone else with the
consent of the discloser.

(99) Schedule 4, item 3, page 183 (after table
item 338), insert:

338A Subsection 25 penalty units.
1317AE(1)

These amendments pick up a recommenda-
tion of the parliamentary Joint Committee on
Corporations and Financial Services. They
provide that a subcontractor of goods or an
employee of such a subcontractor will be
eligible for the protections available under
the new whistleblowing provisions in the
bill.

Senator SHERRY (Tasmania)  (4.53
p.m.)—The Labor opposition will be sup-
porting these amendments.

Question agreed to.

Senator MURRAY (Western Australia)
(4.54 p.m.)—The Parliamentary Joint Com-
mittee on Corporations and Financial Ser-
VICES, as I said this morning, has produced
two reports. The first report came out a little
over a week ago and the second report just
late this week. The government has picked
up a couple of the 27 recommendations in
the first report. I operate with many other
portfolios and responsibilities, and in the
back there I have my adviser, Mr Mark Ley,
who has many other portfolios and responsi-
bilities, so we could not attend to putting all
the committee recommendations into amend-
ments even though many, perhaps most of
them, were unanimous. But I did pick on
one, because it is an area dear to my heart. I
move Democrat amendment R(2A) on re-
vised sheet 4214:

R(2A) Schedule 4, item 2, page 181 (line 4),
omit “in good faith” substitute “with an
honest and reasonable belief”.

This amendment comes from the whistle-
blowing chapter of the part 1 report from the
committee. With the committee’s forbear-
ance, I will touch on some of the elements
there. If you have the report before you, it is
at pages 18 to 21. It discusses the require-
ment for a whistleblowing report to be made
in good faith. Towards the end of the discus-
sion, with various evidence put to the com-
mittee and drawn out, at item 2.61 it says:
Dr Simon Longstaff, St James Ethics Centre, told
the Committee the test should be on the question
of truth.
At 2.62 it says:
He believed that an ‘honest and reasonable’ belief
would be acceptable. Ms Kathleen Farrell, Law
Council of Australia, also supported the honest
and reasonable belief as the appropriate threshold
test.
The threshold test is ‘in good faith’ and the
amendment seeks to substitute that with ‘an
honest and reasonable belief’. The commit-
tee said in summary:
This matter of the motivation behind the disclo-
sure has generated lively debate about the very
fundamentals of whistleblowing protection legis-
lation. There is tension between the views of
those who fear the low threshold requiring an
agency to receive disclosures will encourage nu-
issance or malicious complaints and those who
argue that the motives of the person disclosing

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information is irrelevant—the focus should be on the substance of the allegations. The Committee believes that the legislation must be founded on the premise that the veracity of the disclosures is the overriding consideration and the motives and the informant should not cloud the matter. The public interest lies in the disclosure of the truth. Accordingly, the Committee makes the following recommendation.

Recommendation 4 reads:
The committee recommends that the threshold test of ‘in good faith’ be removed and replaced by ‘an honest and reasonable belief’.

I concur with that committee recommendation. So did the Labor members of the committee and, of course, the Liberal chair and the Liberal members of the committee. That is the simple motivation behind this amendment.

Senator SHERRY (Tasmania) (4.58 p.m.)—I indicate that I have noted Senator Murray’s keen interest in this issue over a long period of time. For the reasons that Senator Murray has advanced, we believe that the case he puts forward is valid and should be supported. The Labor opposition will be supporting this Democrat amendment.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.59 p.m.)—I move government amendment (100) on sheet PK247:

(100) Schedule 5, page 189 (after line 29), after item 4, insert:

4A After paragraph 200F(a) Insert:

(aa) a benefit given under an order of a court; or

This amendment simply provides that shareholders will not have a role in approving a termination payment to directors where that payment arises out of court-awarded damages. That is obviously a matter that needs to be addressed as a technicality.

Senator SHERRY (Tasmania) (5.00 p.m.)—The Labor opposition will support this amendment.

Senator MURRAY (Western Australia) (5.00 p.m.)—I am inclined to support the amendment, Minister, but I would like a little more motivation from you because I suspect that it is not technical. I suspect that it actually relates to a fundamental issue and I am inclined to support it because of what I suspect rather than what you said.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.00 p.m.)—Obviously the rationale is that, if there are court-awarded damages, it puts beyond doubt that there can be some shareholder participation in providing that shareholders can have role in approving such a termination payment. It would be a court order; the company would have no choice as to whether it would abide by it. Subject to its solvency, of course, it would have no choice but to pay it. In those circumstances I would have thought it would be reasonably clear that shareholders would then have some difficulty in approving it. Obviously they can be informed about it, but approving it is something they would not have any material
role in one way or the other if it is a court-imposed award for a certain sum.

Senator MURRAY (Western Australia) (5.01 p.m.)—Minister, floating in my memory is that there have been court cases and that this would clear up a real problem that has been exhibited at jurisprudence. I might be wrong; I could not recall a case.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.01 p.m.)—Certainly it was thought necessary that this should be cleared up beyond doubt. I would think that it is pretty straightforward in terms of jurisprudence that shareholders would not have a role in cavilling with a sum that has been set through the judicial process. Obviously it puts beyond doubt that there is not an expectation that shareholders would have a role. I understand that the motivation behind this amendment is to put it beyond doubt.

Question agreed to.

Senator SHERRY (Tasmania) (5.02 p.m.)—Before I seek leave to move the next block of opposition amendments together, I want to indicate that amendment (63), which I understand is being redrafted at our request, relates to an operative date issue. I would like to move the other amendments by leave together, but not including amendment (63).

Senator MURRAY (Western Australia) (5.03 p.m.)—I will be proposing some alterations to opposition amendments (27), (28) and (29) and, of course, the mover might not accept those. I think that amendments (26) to (29) sit together neatly as a block, so perhaps we can move those first and move the rest later.

Senator SHERRY (Tasmania) (5.03 p.m.)—by leave—I move opposition amendments (26) to (29);

(26) Schedule 5, heading, page 189 (lines 2 and 3), omit “Remuneration of directors and executives”, substitute “Appointment and

remuneration of directors and executives”.

(27) Schedule 5, page 191 (after line 13), after item 5, insert:

5C After section 201D

Insert:

201DA Special rules for the appointment of listed corporation directors

(1) A notice of meeting of a listed corporation at which a person is standing for election as a director must contain the following information for each person standing for election, or re-election, as a director:

(a) any relationship between that person and any director of the company which may affect the independent conduct of the duties of a director; and

(b) any relationship between that person and the company which may affect the independent conduct of that person’s duties as a director; and

(c) all other public company directorships currently held by that person; and

(d) any other information required by the regulations.

(2) A person standing for election or re-election must give the company any information the company needs to comply with subsection (1).

(28) Schedule 5, page 191 (after line 13), after item 5, insert:

5D After section 202C

Insert:

202D Certain payments not to be made

A listed corporation must not pay the following types of remuneration to a director who is not an executive of the listed corporation:

(a) options that are granted over shares of the listed corporation;

(b) bonus payments;
(c) retirement benefits other than superannuation which is required by statute to be paid; and
(d) other forms of remuneration specified by the regulations.

202E Limited-recourse loans
(1) A listed corporation must not provide limited-recourse loans to its directors, or senior managers or employees. For the purposes of this section, a limited-recourse loan is any loan where:
(a) the loan is made by the listed corporation (or an associate of the listed corporation) to a director or senior manager of the listed corporation;
(b) the loan is used to purchase shares or securities of the listed corporation; and
(c) the borrower’s liability to repay the principal is limited to the sale price of the shares or securities purchased by the borrower.
(2) Subsection (1) does not apply to a loan provided by a company if the company’s ordinary business includes providing finance and the loan is provided in the ordinary course of that business and on ordinary commercial terms available to clients of the company.

202F Shareholder approval of securities to be issued to directors
(1) A listed corporation must not issue a security of the listed corporation to a director of a listed corporation without member approval as set out in this section.
(2) Where member approval is required by subsection (1), it must be approved by a special resolution passed at a general meeting of the listed corporation.
(3) Details of the securities to be issued must be set out in or accompany the notice of meeting at which the resolution is considered.

(4) Subsection (1) does not apply to an issue of a security if member approval is not required under the provisions of the listing rules of a listing market in relation to the listed corporation.
(29) Schedule 5, item 5, page 190 (lines 1 to 18), omit subsection 200F(2), substitute:
(2) Subsection 200B(1) does not apply to a benefit given in connection with a person’s retirement from an office in relation to a company if:
(a) the benefit is:
   (i) a genuine payment by way of damages for breach of contract; or
   (ii) given to the person under an agreement made between the company and the person before the person became the holder of the office as the consideration, or part of the consideration, for the person agreeing to hold the office; and
(b) the value of the benefit, when added to the value of all other payments (if any) already made or payable in connection with the person’s retirement from board or managerial offices in the company and related bodies corporate, does not exceed the lesser of:
   (i) the amount worked out under subsection (3); and
   (ii) the amount worked out under subsection (4).
These amendments relate to general issues of appointment and remuneration of directors. In respect of the appointment of directors and listed companies, Labor’s amendment (27) relates to a candidate who is standing for election as a director. In our view, before a candidate is elected as a director of a listed company, certain information must be disclosed, which includes: any relationship between the candidate and any existing director which may affect the independent conduct of
their duties as a director; any relationship between the candidate and the company which may affect the independent conduct of their duties as a director; and any other directorships of public companies that the candidate holds. This amendment is not onerous. It simply requires disclosure and is about breaking up what we would argue is commonly known as the ‘old school tie network’. In Labor’s view, shareholders are entitled to know about a candidate’s relationships with other board members before they are elected. My colleague Senator Conroy discussed issues about executive remuneration during the second reading debate and I do not intend to repeat his comments.

Senator MURRAY (Western Australia) (5.05 p.m.)—It may help the debate if I now indicate where I would like some changes because, if they are accepted by the opposition, the government will have those to respond to. I refer to proposed amendment (28) on sheet 4216 (revised), which says ‘A listed corporation must not pay’. I propose to request that the opposition accept the words ‘or otherwise provide’ after ‘pay’. The reason I do this, Senator Sherry, is that item (d) of your amendment (28) says ‘other forms of remuneration specified by the regulations’. The difficulty is that that could be in means other than what we would normally understand as payment—in other words, it could be in kind or elsewhere. That is my first request, and I will have a second request.

Senator SHERRY (Tasmania) (5.06 p.m.)—I would appreciate your advice on the procedure here but the Labor opposition is happy to accept the suggestion of Senator Murray.

The TEMPORARY CHAIRMAN (Senator McLucas)—Just to assist me, could you identify exactly where you are referring to, please?

Senator MURRAY (Western Australia) (5.07 p.m.)—In amendment (28) there is the heading ‘202D Certain payments not to be made’ in bold. The first line after that says, ‘A listed corporation must not pay the following types of remuneration ...’. Between ‘pay’ and ‘the’ I wish to insert the words ‘or otherwise provide’, because that is the qualifying sentence for (a), (b), (c) and (d). I move:

Section 202D, after “A listed corporation must not pay”, insert “or otherwise provide”.

Senator SHERRY (Tasmania) (5.07 p.m.)—The Labor opposition will be agreeing to that amendment to our amendment (28).

Question agreed to.

Senator MURRAY (Western Australia) (5.08 p.m.)—I now want to add words after ‘listed corporation’. It now reads:

A listed corporation must not pay or otherwise provide the following types of remuneration to a director who is not an executive of the listed corporation:

It is after the second occurrence of ‘listed corporation’ that I wish to insert the words ‘in consideration of the performance of duties by the director as a director of the listed corporation’.

Before we get to the specific words, I want to motivate the argument because if the mover does not accept them then it falls away. Frequently with directors there are conflicts of interest and there are circumstances in which directors are involved in businesses that provide services and goods to the corporation concerned. You will recall that, when the Coles-Myer boardroom stoush was on, that was very much an issue. There are many companies where that is so. It is perhaps the nature of our business world. The difficulty I have is that the way in which this is phrased might be seen to catch somebody who is a director or owner of another
company but is also a director of this company and is providing services and goods. Sometimes it happens just in a related corporation—there is a head office and a number of subsidiary corporations—but sometimes it will be one corporation with a completely separate one. That is the purpose of my amendment. If the mover accepts the general proposition then I will give you the specific words that I suggest.

Senator SHERRY (Tasmania) (5.10 p.m.)—I certainly recall the Myer case. We would accept your principle as you have outlined.

Senator MURRAY (Western Australia) (5.10 p.m.)—In that case, I will give you the specific words. I move:

Section 202D, after "executive of the listed corporation", insert "in consideration of the performance of duties by the director as a director of the listed corporation".

Question agreed to.

Senator MURRAY—There is one other amendment I want to discuss, rather than moving it straight away, to see if there are flaws in the suggestions made to me in this particular area. I am not convinced of the case. At the moment, paragraph (c) in amendment (28) refers to retirement benefits other than superannuation which is required by statute to be paid. You must bear in mind the commencing sentence, which says, ‘A listed corporation must not pay ...’ which then goes to paragraph (c). The suggestion was made to me that it should be ‘retirement benefits other than amounts accruing from payments made by the listed corporation or the director to a superannuation, retirement or pension fund’. My inclination is to support the Labor amendment as is, but if the government were to look at this matter in the other House, it seems to me that amounts could be caught up which perhaps refer to the past. That would be unwise, I would have thought. So I am a little uncertain as to the consequences of the amendment.

My instinct is to pass it now and then let the government examine the point I am making, because they will look at the Hansard. If the government were to accept it in the House of Representatives, one of the options would be to insert the words ‘retirement benefits other than amounts accruing from payments made by the listed corporation or the director to a superannuation, retirement or pension fund’. I do not intend to move an amendment to this effect now; I am just signalling to both the government and the opposition that I have a concern in that area.

Senator SHERRY (Tasmania) (5.13 p.m.)—Our intention with this amendment is to deal with superannuation by statute—in other words, the nine per cent superannuation guarantee. That is where we are drawing the line. Your flagged change may extend it beyond that and we do not want to permit any extension beyond the statutory nine per cent superannuation guarantee, which is the community standard. We have had some very extensive debate on community standards of superannuation in recent times, so we are not of a mind to expand the amendment beyond that at the present time.

Senator MURRAY (Western Australia) (5.14 p.m.)—I accept that. But the government has an understanding of some concerns. One other question that I have to the mover of opposition amendment (28) concerns ‘202E Limited-recourse loans’. The text of 202E(1) on sheet 4216 reads:

A listed corporation must not provide limited-recourse loans to its directors, or senior managers or employees.

Was it your intention to cover employees in the fullest sense of that term?

Senator CONROY (Victoria) (5.15 p.m.)—I understand, Senator Murray, you were asking whether or not we wanted to
include employees in this prohibition. I would say yes. There are many employees at a senior level who would not fall into the level of managers or directors who are offered these loans. To try and draw a distinction between directors and employees would, unfortunately, lead to an artificial break. There are many high-paid employees who would also be offered these sorts of non-recourse loans. I am sure Senator Sherry has made the point: this practice is something that I find difficult to justify. If a director, a manager or an employee wants to buy shares in a company, we support that. But what we want to know is: why don’t they put their hands on their pocket like everybody else and go to the bank and get a loan? They should not be receiving these interest-free loans—all the upside is for them and the downside is worn by the shareholders. While we appreciate the sentiment of what you are saying, we would like to stick with everybody being covered. I seek leave to amend opposition amendment (28).

Leave granted.

Senator CONROY—I move:

Section 202E, paragraph (1)(a), after “senior manager”, insert “or employee”.

I thank Senator Murray for drawing this to our attention. We would like to insert the word ‘or employee’ after ‘to a director or senior manager’ in 202E(1)(a). It was more a drafting error, Senator Murray. Hopefully, that will clarify where we stand on that. We were not trying to be inconsistent.

Question agreed to.

The TEMPORARY CHAIRMAN (Senator McLucas)—The question now is that opposition amendments (26), (27), (28), as amended, and (29) be agreed to.

Question agreed to.

Senator CONROY (Victoria) (5.19 p.m.)—by leave—I move opposition amendments (29A) and (29B) on sheet 4216 revised:

(29A) Schedule 5, page 191 (after line 13), after item 5, insert:

5A Subsection 200G(2)
Omit the subsection, substitute:
(2) The payment limit is whichever is the lesser of:
(a) the amount worked out under subsection (3); and
(b) the amount worked out under subsection (3A), if the person was an eligible employee in relation to the company when the person retired from office. In applying this subsection, disregard superannuation which is required by statute to be paid.

(29B) Schedule 5, page 191 (after line 13), after item 5, insert:

5B After subsection 200G3
Insert:
(3A) The amount worked out under this subsection is:
(a) if the relevant period for the person is less than 12 months—a reasonable estimate of the total remuneration that the person would have received from the company and the related bodies corporate during the relevant period if the relevant period had been 12 months; or
(b) if the relevant period for the person is 12 months—the total remuneration that the person received from the company and related bodies corporate in the relevant period; or
(c) if the relevant period for the person is more than 12 months—the total remuneration that the person received from the company and related bodies corporate in the last 12 months of the relevant period.
(3B) For the purposes of section 3A, if a person has held an office in relation to a company:

(a) throughout a period; or

(b) throughout a number of periods;
the relevant period for that person is that period or the period consisting of the total of those periods.

Although I will briefly discuss items (29A) and (29B) which relate to termination payments, I will not discuss payments to non-executive directors because I discussed those yesterday. The effect of Labor’s amendments is to require shareholder approval of massive termination payments to executive directors which exceed one year’s salary—of course, excluding statutory superannuation. Shareholders, employees and retirees view the payment of massive termination payments to executives and directors who have failed to perform as unacceptable. One academic likened it to mad cow disease in some board-rooms. He said:

It moves from company to company, rendering directors incapable of applying common sense.
Recent history shows that we need to put a brake on rewards for executive failure. The first step is to ensure that performance conditions are met. Labor’s amendments require detailed disclosure of performance conditions.

The second step to put a brake on rewards for failure is to give shareholders a non-binding vote on the remuneration report. The CLERP 9 bill adopts Labor’s policy and requires a non-binding vote. I again want to reiterate our congratulations to the government for adopting Labor’s policy on this. I well remember when we moved this over 14 months ago as an amendment to the Corporations Act—and Senator Murray supported us—that the government accused us of being plagiarists. I am sure you will remember, Senator Murray. We were plagiarists. We were lazy. All we ever did was copy someone else’s policies. That rant and rave went on and on and they voted us down so that they could steal our policy. We are prepared to accept that the government has changed its mind and accept that this is good policy. This is good public policy that goes a long way to empowering shareholders to put these issues into their hands. We welcome that.

The third step to put a brake on rewards for executive failure is to ensure that termination payments are subject to binding shareholder approval. Labor’s amendments give shareholders a binding vote on termination payments which exceed one year’s remuneration. In determining the termination payment, statutory superannuation is excluded—I want to make that point again. Currently it is possible—and this is quite unknown; many experts in corporations law have been quite surprised, because this next section is very obscure—for termination payments to directors to reach up to seven times a director’s annual salary before shareholder approval is required. The CLERP 9 bill does not fix this.

When this bill is passed, directors will still be able to obtain termination payments amounting to seven times their annual salary package if that is what is agreed. But we think that if these termination payments exceed one year’s salary then shareholder approval should be required, because nothing gets up shareholders’ noses more than paying for failure. They do not mind generously remunerating executives who are doing a good job, but what they cannot abide is rewarding failure. Shareholders have been frustrated in the last five years, as this has gone on and on.

My favourite quote in this area comes from the chair of CalPERS, the Californian public sector superannuation fund. It was in relation to the New York stock exchange and
the obscene payments made to Dick Grasso as the CEO of the stock exchange. The quote goes something like this: ‘We’ve dragged the snouts out of the trough. Now we want to know who filled the trough.’ What CalPERS was doing was pointing the finger at boards, saying, ‘Why are boards giving these outrageous payments? We want to make the boards accountable.’

Labor believes it is tightening up the law. There is already a binding vote in the law. This is not groundbreaking. The law gives a binding vote on termination payments. It is just so woolly; you could drive a truck through it. Why haven’t there been any of those votes? It is because corporations have been able to structure their payments to avoid this binding vote. Labor is saying no. The time has come to put the power back in shareholders’ hands and make boards accountable. If boards want to put up proposals that are outrageous and obscene, they are going to have to put them up knowing that they have to get shareholder approval. That will start giving shareholders the power to make these directors accountable. As the chairman of CalPERS said, ‘We want to know who has been filling the trough.’

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.24 p.m.)—We are considering (29A) and (29B), a proposal to amend the bill to require shareholder approval for termination payments to executives that exceed the value of one year’s remuneration. I want to make a couple of very brief points. The brevity of my contribution does not necessarily reflect anything other than, as I understand it, exhaustive discussion about how these amendments are to proceed. Executive remuneration is, in the government’s view, a matter for the board. CLERP 9 facilitates communication between boards and shareholders on this issue and provides proportionality between length of service, remuneration and termination payments.

The bill currently requires shareholder approval of certain termination payments to directors where those payments exceed one year’s remuneration or a higher amount determined in accordance with a formula set out in the Corporations Act. The ALP proposal would require shareholder approval where any termination payment exceeds 12 months remuneration except for payments required to be paid by law or those that represent accrued leave entitlements—we have had some discussion about that—or is made pursuant to an agreement entered into prior to 1 January 1991. The intent of the provisions is to ensure that shareholder approval is required in respect of termination payments that really are not proportionate to either the director’s income whilst in office or the length of tenure. The formula relates length of service and the level of remuneration during service with the amount paid out on retirement. The formula does seek to ensure payments made to directors upon their retirement from office are subject to shareholder scrutiny where they may be large enough in relation to the length of time in office or overall remuneration practices of the company. We think it is important that those individual factors are taken into account.

While the opposition has claimed that the provisions of the bill will allow directors up to seven times their annual remuneration, the actual proposal to limit payment to one year’s remuneration very much throws the baby out with the bathwater and does not achieve any proportionality of termination payments to income whilst in office. The proposal is to require shareholder approval of termination payments to executives. The bill requires approval for particular payments made to directors, including executive directors. The bill does not intend to blur the line
of responsibility for shareholders to determine non-executive directors’ remuneration and for directors to determine executives’ remuneration. Requiring shareholders to directly approve payments to executives rather than to enhance accountability would obviously detract from the accountability of directors for such payments. It is for those reasons that the government will not be supporting the amendments.

Senator MURRAY (Western Australia) (5.28 p.m.)—I was taking some advice from the chair of the committee of which I am a member and which has been dealing with this bill. I got the impression Senator Conroy got a bit excited, because I distinctly heard him talking about non-binding as well as binding propositions which confused me. This is surely a binding proposition that Senator Conroy is putting here. I scurried across to my adviser and he said that this is a change in language. I presume, Senator Conroy, you got excited when talking about other things.

Senator CONROY (Victoria) (5.29 p.m.)—Thank you, Senator Murray, for clarifying that. I suspect that the emotion of the moment possibly led to that confusion. This is definitely a binding proposition. It is an existing proposition, which we are amending to make tougher, and it is binding. It exists currently in the act. We are just tightening it up.

Senator MURRAY (Western Australia) (5.29 p.m.)—After you said ‘non-binding’ I re-read it and thought that perhaps I was tired and could not pick it up. I am glad to discover that it is binding. Frankly, I do not have much time for non-binding votes. I think they are symbolic. As you would know, later on I shall move some binding votes of my own. We will support these amendments.

Question agreed to.

Senator CONROY (Victoria) (5.30 p.m.)—by leave—I move opposition amendments (30) and (31) on sheet 4216 revised:

(30) Schedule 5, Item 11, Page 192 (after line 16), at the end of the item, add:

(aa) the discussion of board policy in paragraph (a) must include:

(i) a discussion of the relationship between such policy and the company’s performance;

(ii) a detailed summary of the performance conditions where any element of remuneration is subject to a performance condition;

(iii) an explanation as to why such performance conditions were chosen;

(iv) a summary of the methods used in assessing whether any such performance conditions are met and an explanation as to why those methods were chosen;

(v) if any such performance condition involves any comparison with factors external to the company:

(A) a summary of the factors to be used in making each comparison;

(B) if any of the factors relates to the performance of another company, or two or more other companies, or of an index on which the securities of a company or companies are listed, the identity of that company, of each of those companies or of the index; and

(vi) in relation to persons described in paragraph (c), where any entitlement to securities is received which is not subject to performance conditions, an explanation as to why that is the case;
(vii) in relation to persons described in paragraph (c), an explanation of the relative importance of those elements which are related to performance and those elements which are not related to performance in respect of the terms and conditions of the person’s remuneration; and

(viii) such other matters as may be prescribed by the regulations.

(31) Schedule 5, item 12, page 192 (after line 30), at the end of the item, add:

; and (d) the following details in relation to the remuneration of:

(i) each director of the company; and

(ii) each of the 5 named company executives who receive the highest remuneration for that year:

(A) the value of options granted, exercised and lapsed unexercised during the year and their aggregation;

(B) the percentage of the person’s remuneration for the financial year that is made up of options granted to the person in that year;

(C) an explanation of the company’s policy on the duration of the contract, the notice periods and termination payments under such contracts;

(D) details of any equity value protection scheme entered into by them or on their behalf.

For the purposes of this paragraph, equity value protection scheme means any financial arrangement which results in the director or executive retaining legal ownership of unvested equity in the company the value of which to the director or executive remains fixed regardless of changing market values of the equity.

For the purposes of this paragraph, unvested equity means equity in the company which has been issued to the particular director or executive by the company pursuant to a director or employee equity scheme and where:

(i) the equity was issued subject to vesting arrangements over time and the equity has yet to vest; or

(ii) the equity forms part of a minimum holding requirement imposed on the director or executive by the company.

(e) a line graph which plots for each of the most recent 5 financial years the total shareholder return on:

(i) the holding of shares of that class of the company’s equity share capital whose listing, or admission to dealing, has resulted in the company falling within the definition of a listed company; and

(ii) a hypothetical holding of shares made up of shares of the same kind and number as those by reference to which a broad equity market index is calculated, and state the name of the index selected for the purposes of the graph and set out the reasons for selecting that index.

Question agreed to.

Senator CONROY (Victoria) (5.30 p.m.)—I would like to indicate that we seek to defer opposition amendment (63) on sheet 4216 revised. We understand there are some issues around that amendment and we seek to defer it for the moment in order to clarify those.

Senator MURRAY (Western Australia) (5.30 p.m.)—I move Democrat amendment (3) on sheet 4214 revised:
Schedule 5, item 7, page 191 (lines 25 and 26) omit subsection (3), substitute:

(3) The vote on the resolution binds the directors of the company except that:

(a) an absolute majority of shareholders of the company may vote that approval of the remuneration of executive directors is not necessary; and

(b) where a vote of the kind mentioned in paragraph (a) is taken, a board remuneration policy must be approved by the AGM.

This amendment requires me to re-express the view I just put, which is that I rather like binding votes. This amendment specifically requires the remuneration of directors to be determined by a binding vote. We heard throughout the committee’s hearings—and Senator Conroy was present at some of those—this constant obfuscation, this constant mixing of the mud. The myth is put out that directors are responsible to shareholders and it is quite right that shareholders should determine directors’ remuneration, but when you talk about the management they say, ‘No, that is for the board to determine.’ Then you say, ‘But most of the people who create immense angst amongst shareholders are actually both management and directors.’

The fact is that you have to decide. Either directors are going to have their remuneration determined by shareholders or they are not. I think the principle is exactly right: the shareholders determine the board, and determine everything to do with that board, and the board run the company and determine everything else. If that principle is right—and I have spelt it out in much more detail in my minority report—then whether you are an executive director or a non-executive director the vote should be binding. That is the end of it as far as I am concerned. If an executive director does not want to be in that situation then let them get off the board and be an executive, and when the board needs to talk to them they can come along and front up to the board. We should remember that one in five directors is an executive and that most other directors are former executives themselves. I do not know the numbers, but I suspect that the vast majority of so-called non-executive directors used to be executives, so they have that culture and mentality.

This is a very simple proposition: it says that if there is a shareholder vote it binds the directors of the company. I have given an out. I continually argue on company law that it is the shareholders who make the decisions about these things. If an absolute majority of the shareholders of the company—not just those who are in the pocket of the chair so that he can fiddle the proxies as he sees fit, as under the present system—vote that approval of the remuneration of executive directors by those shareholders is not necessary, that is fine by me. They are entitled to do that. Where a vote of the kind mentioned in paragraph (a) is taken, a board remuneration policy must be approved by the AGM with respect to those executive directors. That is a very reasonable proposition. The binding vote continues a well-understood and widely accepted view that the shareholders are entitled to bind the directors of a company with respect to these matters.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.34 p.m.)—I would like to very briefly respond to Senator Murray’s comments. His amendment (3) is a proposal that shareholder approval be mandated for all remuneration and retirement packages for directors, whether executive or non-executive. The government’s position on this is that the bill does not seek to shift accountability for determining executive remuneration to shareholders, even in relation to executive directors. It is appropriate, in the government’s view, that the responsibility
and accountability through the non-binding shareholder vote remains with the board.

As I said in respect of some earlier amendments—the ones we have just dealt with—the bill does not intend to blur the line of responsibility for shareholders to determine directors’ remuneration and for directors to determine executives’ remuneration. Requiring shareholders to directly approve payments to executives would detract from the accountability of directors for such payments. The Corporations Act provides that directors are to be paid remuneration as determined by the company at a general meeting. However, this is a replaceable rule that in practice is almost universally overridden by a provision in the company’s constitution.

As everyone knows, the listing rules of the ASX require shareholder approval of any increase in the total pool of directors’ fees payable to all directors. This does not apply to the salary of an executive director. The government consider, then, that there are already mechanisms available which require shareholder approval of increases in non-executive directors’ remuneration. Again, the non-binding shareholder vote in directors’ and senior executives’ remuneration is, in the government’s view, a powerful tool to hold directors to account and should be at least given a chance to operate in practice before much more restrictive amendments are considered. A related issue that we have just dealt with is the opposition’s proposal—which has now been passed—to amend the act to require shareholder approval for termination payments to executives that exceed the value of a year’s remuneration. Given the way in which Senator Murray has cast this matter, I have at least placed on record the government’s view that we will not be supporting it.

Senator CONROY (Victoria) (5.37 p.m.)—Senator Murray is a very clever expounder of his ideas, and he sorely tempts me on this one. He represents a view that I have much in common with. He articulates very well the disillusionment of many shareholders about the behaviour of many corporate boards and the disconnect that has occurred between boards and their shareholders, and I have great sympathy for that. The lack of accountability, the gross excesses which have occurred in the last few years, both here and overseas, are down to weak boards that have not been prepared to exercise their authority. They have used many justifications. They talk about the international market and say that they have to be competitive; they blame disclosure—one of the very things I am most proud of and I am sure Senator Murray is as well. In 1998 we combined to force the disclosure of executive remuneration into the law because companies were not complying. We heard the screams that it was the end of the world, it was terrible and it would lead to exorbitant salary increases. Six years later, this is the argument the government, CEOs and company directors are still trying to run. They try to say, ‘It’s because you’ve made it mandatory, Senator Conroy. It’s because you and Senator Murray got together and mugged us in the Senate that we have seen these explosions in salaries.’

Senator Murray—And in the UK.

Senator CONROY—That is right. Apparently we have caused this international leapfrogging to take place. You are dead right, Senator Murray. They use this leapfrogging argument, saying that the first thing people do every year is sit down and open up the company reports for the company across the road and say, ‘They’re getting paid this much money; we want this much money’—the comparative wage-setting process which the government rail against year after year in relation to the trade union movement. It used to happen that the workers in a factory would
get to together and say, ‘They get paid a dollar more than us. We deserve the same as they get paid across the road.’ The government, business and management have railed against this comparative wage system. They say it should be about productivity, that the workers should be made to base their wage claims on the productivity of the company. Yet here we have, in the international market, the comparative wage justification: ‘That boss over there gets paid that much. That person who does the same job as I do gets paid more than me. I should get paid more than I do.’ Well, it has been rejected right across the board in the wage system and it should be rejected for the sham that it is in the directors’ club — because that is what it really is: a club.

I am sorely tempted by this. I hope, Senator Murray, that the proposals that have been put in place work. I believe we need to give this new system we are putting in place, these new powers — albeit limited — a chance to work. They may not work, because at the moment this government is rejecting our amendments. We may not be giving enough power. We may not be shaking the club up enough, but I would like to give this system of non-binding votes a trial. If the abuses continue and the exorbitant and obscene salaries and payments for failure continue, I think you will have a strong argument to put in the next few years that the non-binding vote has not worked. But I would like to give this system a trial first. I believe that, if the governments accept our amendments, we will put in place a tough enough regime. I may be wrong, I may be an optimist; I hope I am not. But at this stage Labor would like to give this system a trial before we take the extra step you are proposing. So at this stage, while I agree with the sentiment and I think you articulate it very well, Labor will not support this amendment. But the business community should be on notice that, if they do not respond to shareholder concerns and community concerns about this, they will bring on themselves the sorts of proposals that Senator Murray has championed and will continue to champion.

Senator MURRAY (Western Australia) (5.42 p.m.) — This is a really important issue. The issue of binding versus non-binding votes has attracted the attention of governments, interested organisations and legislators all over the world. I guess the non-binding vote is a step forward in the debate. The reason I rise again is that I think my proposition is a logical consequence of the way in which the Corporations Act is phrased. Minister, your advisers will tell you this and perhaps you, as a barrister, might know. My understanding of corporations law is this: it does not distinguish between executive and non-executive directors. I do not recall within the Corporations Law any instances where executive directors are pulled out, if you like, and non-executive directors dealt with separately from executive directors. There may be some instances but none that I can recall.

The difficulty for you, Minister, is that in enunciating this position the government is introducing a very profound change to policy in corporations law because what you have just said is that the government takes the view that executive directors should not be subordinate to shareholders but subordinate to the non-executive directors, who are subordinate to shareholders. You have effectively created two classes of directors. Perhaps that already exists. I always thought there were four classes: chairs, mostly chairmen; executive directors; non-executive directors; and women — because they were just added on as the optional extra in the last few years! I have always thought they needed much more parity than they have got, which is one reason I am trying to open up
the director election processes. I digress, but I feel strongly about that.

I quite seriously put to you that, if you are going to pursue the proposition you have put, I think the Corporations Law needs to be reviewed. In all those circumstances where it is the government’s determination that executive directors as directors are not responsible to shareholders, you need to say so; because my reading of the law, as it is, is that it does not distinguish between the two. I think—and you would know, Minister, as a lawyer—that for some creative lawyers out there it opens up the opportunity for jurisprudence, because somebody could claim that the law is not expressed in the way you have stated and that someone is entitled to demand that executive directors, because they are directors, are responsible to their shareholders and the vote should bind them.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.45 p.m.)—Without replying in detail to that, I think you are right. Certainly it is my experience and understanding that the law does not distinguish between executive and non-executive directors. I agree with you. I think these changes and some of the prescriptions that are being written into some of these amendments—and I am not attacking any in particular—will have lawyers absolutely salivating. I think that that is almost an irresistible proposition. What I think would be appropriate at this stage of the debate is that I bring your comments to the attention of those giving detailed consideration to the underpinnings of this legislation. For the purposes of tonight, though, I must say that we still are not persuaded by the amendment.

Question negatived.

Senator CONROY (Victoria) (5.47 p.m.)—I move opposition amendment R(63)—a transitory provision designed to tidy up the matter that was raised previously—on sheet 4261:

R(63) Schedule 12, item 2, page 251 (after line 30) at the end of section 1468, add:

(4) The amendments made by section 201DA of item 5C and section 202F of item 5D of Schedule 5 to the amending Act apply after 1 October 2004.

Question agreed to.

Senator MURRAY (Western Australia) (5.48 p.m.)—I think I am having fun but not much success. That is probably the summary of what is happening. I turn to Democrat amendment (4) on sheet 4214 revised. Again, I suggest to you, this is a really fundamental issue. It is at the forefront of modern debate on corporations law, on shareholder rights and on the need for much more voting to occur. I must say in passing that I was absolutely intrigued by the negative commentary on the European Union elections, because they only got a 46 per cent vote and they said that that showed that the whole European Union was looking shaky and there was not enough support for it and so on. I thought to myself, ‘Hang on; the American President gets elected with only 50 per cent of the populace voting.’ The idea behind those remarks is that not having a full vote does not always indicate a lack of support or participation. Nevertheless, I have a bias towards maximising the shareholder vote, because I believe that corporations are democracies and that the vote should be maximised. I hold this view, quite frankly, with the absolute belief that you need to dilute and diminish the power and the patronage of dominant shareholders, because I think they often act in their interests and not necessarily in the interests of all the shareholders in the entire company.

This debate is right at the heart of a Labor proposition which has alarmed many institutions and which we will deal with later. Es-
sentially what Labor are proposing is based on the same philosophy—that is, to maximise the vote. They have taken the view that that should be done by institution; in other words, they say that super funds should vote and must vote—it is a compulsory vote—on every single resolution that comes before them. That could result in thousands of thousands of matters, both major and minor, to be dealt with. I have sympathy with that view because of the strength of feeling I have about maximising the vote in corporate democracies, but I recognise that, at this stage of the ability of those organisations to do that thoroughly and with proper consideration and thought, there are some dangers in the Labor proposition.

We, on the other hand, take the view that there are subject matters which you should have a maximum vote on. I do not think there is a participant in this debate who would disagree with my statement or my belief that the board is the single most important institution in a corporation. It is the body to which shareholders delegate their powers as the representative body. It is an executive as well as a deliberative body. It deals with the strategy and the effectiveness of the company, and it in turn determines how the management shall operate. So I think the single most important decision anybody makes when voting is a decision on who the directors of the company shall be. If I look at subject matter as opposed to an institutional approach, I would say that if you are looking for a compulsory vote that is the first area you should go to.

The second area that we should go to is much neglected by Treasury, by CAMAC, by our own committee and by the government, the opposition and everyone else, and that is the issue of election processes. The contestability of election processes for new directors—and for those women in the audience, I would remind you that the barriers to entry are very considerable—is quite extraordinarily limited by the way in which company constitutions are rigged. They are rigged so that the dominant shareholders and those with patronage can ensure that they get their people on the map. The problem with that is that people have not paid enough attention to reforming constitutions. So I would say that the next most important thing that you should have compulsory voting on is the constitutions of companies.

The third most important area is the area of remuneration, not out of some desire for people not to earn big bucks if they deserve them but because it relates to the performance of the companies. I recall—and it sticks right in my head—the figure that was quoted in America, that if you expensed the options and the hidden remuneration packages of the executives and the boards of America properly on their balance sheets you would reduce the worth of American companies by 13 per cent. This is not a minor issue. I have no means of validating that figure, of course, but I do recall the quote.

Where do I get to with this? What I am suggesting is that not only is it desirable to have shareholders vote but in fact there is a duty on institutional investors to vote. The difficulty with duties that are not spelt out in law is that, to make them apply, people have to take other people to court, and for years and years wend their way through the various court structures all the way up to the High Court. It is very difficult and very costly and very awkward.

I just say to the government: an institutional investor who invests on behalf of the beneficial owners of shares has a fiduciary duty. It is a fiduciary duty established through centuries—not just years—of common law. It is a fiduciary duty established through endless jurisprudence. It is a fiduciary duty which they are not exercising, and
unless you get really heavy court cases coming down they are not going to exercise that duty. I say that an institutional investor has a fiduciary duty in respect of the beneficial owners of shares they manage or act for and, if they have that fiduciary duty, they must vote at an AGM of the company. And I say that they must vote on at least those three areas which I have already outlined.

Why do I not say that they should vote on every resolution? Simply because I do not think that they are equipped to do so yet. I do not think that they are going to have the systems, the software, the analysts, the managerial capacity to do that. But I think that they should at least do it in the most important areas. So, if you like, I have taken a Labor principle which I think rests on the foundations of fiduciary duty. I have taken a Labor principle which they have expressed, which is that you need to maximise shareholder participation in corporate democracy. I have translated it in a different sense because we Democrats are strong supporters of democracy, of process and of good principle.

I have put the argument to you with some force, I think. I am as certain as day that it will be knocked over as usual. But I do say that this sort of thinking is gathering ground world over and you have got a choice: you can be a leader in this area or you can be a follower. As sure as God made little apples, or whatever the expression is, I think it was one of those chaps who made little apples, wasn’t it?

Senator McGauran—God made little green apples.

Senator MURRAY—Okay, as sure as that—one of these days compulsory voting is going to apply to institutional investors. I move Democrat amendment (4) on sheet 4214:

(4) Schedule 5, item 7, page 191 (after line 26), at the end of section 250R, add:

(4) Where a listed company has an institutional investor, and that institutional investor has a fiduciary duty in respect of the beneficial owners of shares they manage or act for, they must vote at an AGM of the company on the following:

(a) any resolution concerning the constitution of the company; and

(b) any remuneration of directors, whether executive or non-executive; and

(c) any matter concerning the election of directors.

Penalty: in the case of an individual—50 penalty units; or

in the case of a body corporate—500 penalty units.

Senator CONROY (Victoria) (5.57 p.m.)—As always, eloquently expressed, Senator Murray. I want to clarify one matter. Certainly when Labor first began consulting and circulating our issues we were looking at mandating voting for all issues. But, following a lot of the concerns that you have raised, we have actually refined that down in the amendments. We have moved to just material matters to take into account the sorts of concerns that you and many others have expressed to us. As you would be aware, one of the reasons we did circulate our amendments—after long thought and as much as I believe it should be mandatory voting for all—is that for the moment we believe we should take small steps. So we have moved back from 100 per cent to matters that are material.

IFSA are once again proving themselves to be one of the most powerful lobby groups in the country—certainly their lobbyists are worth the money they are paid. IFSA were
demanding, and were supportive of, what you did yesterday, Senator Murray—and they certainly demonstrated who is running the show with their opposition to disclosing what they charge their customers. The passion with which they pursued the outcome that you delivered them yesterday is equal to their opposition of your proposal today. It would have been nice if you could have convinced them that if they wanted one they could have had the other. I know that you do not necessarily like to horse trade like that, but in this instance you might have done everyone a favour by getting at least one of the two things. They are passionately opposed to disclosure of how they vote—never mind being forced to vote. I certainly share your sentiments. I do believe, and I have argued passionately, as you would be aware, that there is a fiduciary duty. I do believe they should be voting. I do not believe that they should go missing. I do not believe that they should be conflicted, as they are. The only way, ultimately, we are going to get proper outcomes in this situation is by having them vote and by making them disclose how they vote.

Rather than achieving 100 per cent in relation to this amendment to deal with material resolutions, I am prepared to accept I will not at this stage achieve all that I seek to achieve. I believe that for the moment transparency and disclosure is as much as we can possibly achieve. I wholeheartedly endorse your statement, Senator Murray, that this is a growing force, that this government stands in the way of an international movement, and that it will be ultimately defeated by this movement, because the owners of the money, the owners of these shares, are the ones driving this agenda. Your narrow self-interest is in protecting IFSA and its members and in serving its interests, as you did yesterday and as you are going to do again today. You may have a small victory today, but ultimately you will lose and IFSA will lose on this matter.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (6.01 p.m.)—I do not propose to engage senators on the activities or otherwise of lobby groups. What I do think is important to stress here—and Senator Murray expressed it very much as a philosophical argument—and what I think is the real issue here is: what is an effective form of participation? Views can legitimately vary. I do not know that I would agree with the proposition—if indeed it is a proposition being put—that superannuation fund trustees, fund managers or institutional investors would be in breach of their fiduciary duty if for some reason they did not vote. I do not know that it necessarily would be the case—unless they were required to, of course. I can envisage situations where there may be reasons and where it certainly would not require voting as a discharge of a fiduciary duty. That is a very theoretical argument because obviously circumstances do vary.

I think the question here is: what is an effective form of participation and how is it delivered? Industry guidelines are already working well. A legislative requirement of the kind proposed here would certainly involve significant costs of compliance. I do not think we should be fooling ourselves about this. What is the cost? The proposal is based on a number of assumptions. As I have said, I do not know that they are necessarily made out. The importance of different subject matters that might be facing a board will vary across companies and, of course, according to different circumstances over time.

There is a number of arguments, however, that I want to place on record against mandatory voting. My view is that the matter is probably best left to industry guidelines, which are flexible and seem to be working
My understanding is that high levels of voting are recorded. In the order of 92 per cent of all company resolutions appear to be voted on. Cost would be imposed on institutional investors and of course that will be borne by both their members and, most importantly, beneficiaries. Voting may be, and usually is, resource intensive and may force international investors to engage analysts with the expertise to determine all of those issues. That may be something that is engaged in any event, and maybe it should be engaged in any event. I just think we need to have a much better handle than we appear to have on the practical implications of what we would actually be imposing here if we were disposed to agree to this amendment.

Mandatory voting would also generate significant administrative and enforcement costs. I think Senator Murray mentioned the fact that once you get into this line of country the only way you enforce it is when you push people into the court system or have fines and administrative arrangements to deal with it. There is, in my submission, a range of unintended consequences. Penalties would be imposed where a simple oversight led to a failure to vote on one of many resolutions. A $50,000 fine is a very draconian response or impost, it seems to me. Institutional investors may be discouraged from investing in listed Australian companies and may move funds offshore.

I might just mention to senators Conroy and Murray that one of the issues in this debate is that you can drill down and require a lot of things of companies—and indeed it is appropriate that we look at a framework and try to get the balance right in this CLERP 9 debate—but there is a broader picture out there. From experience, when you are managing a wide range of policy development across different areas, you find that investment is affected because you impose on institutions requirements that are so onerous that they are not able to, or at least not willing to, meet them—and so they put their money elsewhere. That is often said in response to any tightening of requirements, but in this case it does seem to be a bit of an overreach that might well and truly produce that result.

Mandatory voting also overlooks, as I said earlier, other effective forms of participation, including direct contact with boards and management. It does not allow for genuine reasons to abstain. It may encourage, as I have referred to a little earlier, the requirement to engage such analysis that you, as a board, are covered within an inch of your life for whatever view you take. On other occasions that may not be possible and you are forced into doing something arbitrary and uninformed.

Proponents rely on a number of assumptions that I do not necessarily think are made out in the Australian setting. Australia has a high proportion of retail investors, and it will not necessarily lift the rate of participation but it certainly will impose costs. Shareholder voting really cannot be compared to electing a legislature. The decision to invest in a company is a private matter. This government has strived across a range of different policy developments and responses to make sure that people are much better informed. One of the matters of which I am proud—we in this place are all proud of things that we think really make a difference—is the fact that I have encouraged and have actually got a task force looking at how we can have a regulatory structure on the one hand and, on the other, provide much more effective information and education for people so as to make them much more financially literate. I do not only mean the basics; I want even those who are quite sophisticated to have access to information they otherwise might not have. Institutional investors certainly have a fiduciary duty to act in the best
interests of members and beneficiaries—that is an unassailable proposition. It is really a matter of how we put some flesh on the proposition. In some cases it may be in the members’ best interests not to vote. That is a possibility. Mandatory voting is a sort of one size fits all thing that overlooks the differences and will simply once again codify what we have earnestly tried to avoid: a one size fits all, tick a box approach to voting.

Finally, I want to mention that in my view mandatory voting on material resolutions is problematic and implicitly undermines the importance of other matters. I appreciate the way Senator Murray put his argument and I have listened to the way in which Senator Conroy put his argument, but the importance of different subject matters does vary, as we know, across issues and companies. It is difficult to identify a voting right which is inherently most valuable and to relegate other decisions that may have a real bearing on the conduct of the company that are not going to be in the net. So I do not think you can cherrypick. I think it is very difficult to be cherry picking as to what you say is important and what is not. I can understand the kernel of the three instances that Senator Sherry mentions, but I would urge those participating in the debate, in thinking carefully about this, to consider what is an effective form of participation, and it is the government’s view that forcing everyone down the same chute is not it.

Senator CONROY (Victoria) (6.10 p.m.)—I rise to respond to a number of those statements and to point out my view, as Senator Murray has heard me put on a number of occasions. If you want to talk about a tick a box mentality, let us have a quick quiz for those in the chamber. Senator Murray, you already know the answer because you have heard me ask this quiz question before. How many resolutions were defeated on the floor of an AGM out of the hundreds and hundreds of resolutions at all of the AGMs around Australia last year? None—not one. You want a tick a box mentality—we have got it. How on earth do you explain that every single resolution moved got passed and that everyone voted for it? If that is not tick a box, what is?

Senator Coonan—It sounds fine to me.

Senator Murray interjecting—

Senator CONROY—Exactly. What has happened is that every single resolution that has been put up has been passed. Only two resolutions were withdrawn, and they were two very big and important steps. People that I have credited publicly deserve credit for the stands they took with them, but they were withdrawn. But every single other resolution that was put up was passed including—to the shame and embarrassment of fund managers in this country—the Boral amendments, ones that Senator Murray and others would know of. I went and attended the Boral AGM to protest. I held a proxy and I spoke against the resolution but unfortunately it was passed.

Can I just make the following point. Compulsory voting for pension funds—or super funds, as we call them—is not a radical proposal. It is a proposal that was introduced in the United States of America by the Ronald Reagan Republican party in the Congress. It was introduced by a gentleman named Bob Monks. Bob Monks, as he will tell anybody who asks him, says: ‘I am a Reagan Republican and I believe in empowering shareholders. I do not believe this is anything other than a perfectly straightforward and reasonable proposition.’ If the Ronald Reagan Republican party can endorse mandatory voting for pension funds in the United States of America, what is the problem here? Why is this government yet again doing the bidding of IFSA? Why is it not prepared to stand up on behalf of share-
holders? I know, Senator Coonan, that you disagree with this, but I have got to say Senator Murray is dead right: there is a fiduciary duty to voting. The fact that so many people have ignored their fiduciary duty is shameful. If we have got to end this farce whereby companies can try to argue that they do not have to have a vote and that there is no fiduciary duty to have one, I say so be it. Let us mandate voting. Let us put an end to this ridiculous situation. As I said earlier, Senator Murray is dead right. We will win this battle; it will occur. This government may want to do the bidding of fund managers and IFSA yet again but it will ultimately be unsuccessful. A worldwide corporate governance movement is growing, the power of shareholders is growing and we will win this debate ultimately. Senator Murray, you are dead right.

Question negatived.

Senator MURRAY (Western Australia) (6.14 p.m.)—We are now on amendment (5), which is a fascinating proposition, and I must thank some union research for the idea coming to me on this one. Coming from a business background, as I do, I always think it is a great idea if people can earn a lot and improve their financial standing and so on. But I am always deeply offended by the double standards that I see applied to working people. I do not know of any listed company that is not represented in a major lobbying organisation—the Group of 100, the BCA, the ACCI, AIG or any of those. Whenever an issue comes out where working people are saying, ‘Actually, we need more money for the annual wage case through the AIRC,’ or, ‘We’re concerned about job security,’ they say, ‘This is going to cost a lot,’ or, ‘This could affect jobs,’ and so on. They are reasonable arguments—decisions about money do affect productivity, efficiency, business survival and so on. But when it comes to their own remuneration: oops! It is all forgot-
ten. I make a generalisation, of course, because that cannot be so for everybody who runs a business.

The problem with that is that you end up being angry about the double standards: the shareholders end up being angry and the community ends up being angry. That is why executive pay is such an issue. It is a touchstone of what is wrong with our country. It is a touchstone of this individualism—this ‘me first; I’m all right, Jack’ kind of approach from a portion of our community. The reason we are spending so much time talking about executive remuneration is that it matters so much to Australians; it also matters to the businesses and the communities that the businesses affect.

Last year I saw a report on executive salaries that was conducted by Dr John Shields from the University of Sydney for the Labour Council of New South Wales. They have not always been my best friends, I might say; but I was interested by this. It stated that they had found evidence that the more a company pays its top executives, the worse it performs. It struck me as an amazing outcome. The report examined share prices, returns on equity movements and earnings per share in Australia’s largest 100 companies. In all criteria, taking into account the size of the company, there was a significant reduction in shareholders’ returns where executives were overpaid. It found that companies perform best when the executives are paid between 17 and 24 times average earnings. You can see where I am going with this. If they were paid more—in other words, if the payment began to get beyond that which was reasonable—performance began to deteriorate. The study found that, even if the executive was paid in share bonuses and share options, the company results suffered.
Over the past decade executive remuneration has on average mushroomed from 22 times average earnings to 74 times average earnings. Highlighting the importance of remuneration disclosure, the HIH royal commission recommendation No. 1 on corporate governance says:

I recommend that the disclosure and other requirements of the Corporations Act 2001, the relevant accounting standards and the Australian Stock Exchange Listing Rules that relate to directors’ remuneration be reviewed as a matter of priority, to ensure that together they achieve clear and comprehensive disclosure of all remuneration or other benefits paid to directors in whatever form.

That refers to directors. There is also the sense of people needing to justify to the shareholders where they are paid very large amounts. We have always supported the proposal of a remuneration report outlining the remuneration of directors, the five most highly paid executives of the company and the consolidated entity. But we recognise, as I am sure everyone in the room does, that the cut-off at five is arbitrary. In fact, for some low-cap companies, five is probably too many; and for other large-cap companies, it is too few. It may sometimes be the case that it does not pick up some of those whose pay is so high that shareholders may need to be alerted to the fact. For example, it is understood that, despite its dreadful recent performance, there are 14 executives at AMP who are paid over $1 million. That information may be a bit dated, but that is my understanding.

In the interests of transparency and accountability, the Democrat amendment that I am about to move proposes to introduce an amendment requiring the annual disclosure of the remuneration of all executives and employees who are paid more than 20 times the full-time adult ordinary time earnings. Based on the December 2003 weekly figure of $937.70, this would require reporting of all remuneration packages over $975,208. Is this an unreasonable proposition that we are putting? We are basically saying that the shareholders are entitled to know that they can approve anyone being paid over $1 million. In summary, Senator Conroy, we are saying that in addition to the cut-off at the five highest paid, we are recommending that the board has to tell the shareholders why anybody above $1 million is worth it. That is essentially the proposition: either a $1 million cut-off or the top five. I move Democrat amendment (5) on sheet 4214 revised:

(5) Schedule 5, item 12, page 192 (after line 30), at the end of the item, add:

(1A) The details in relation to remuneration prescribed in paragraph 1(c) must include the total remuneration of each director and company officer where the value of the total remuneration is equal to or exceeds 20 times the full-time adult ordinary time earnings as periodically reported by the Australian Bureau of Statistics.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (6.21 p.m.)—I think at issue here is an assumption that, because you are highly remunerated, you have the ability to have a significant influence on the overall management of the company. I do not know that that assumption is always correct, as I will just outline very briefly. But, firstly, it is not clear how this rule would actually interact with the disclosure requirements. I think what you said, Senator Murray—and I may not have quite got it—was that this would replace the top five disclosure requirements.

The current provisions of the bill are designed to require disclosure of persons who are central to the governance of the company—I think that is the issue—and have the ability to impact on the strategic direction of the company. It is important that these indi-
individuals’ remuneration be disclosed, as they do make key decisions—I do not think there is any argument about it—that affect the company and the incentives which drive them and that may have a bearing on the overall performance of the company. I think we are all in furious agreement that, if highly remunerated people also have some issue to do with the central governance of the company and an ability to influence the company, that should be disclosed.

I did want to put on the record, after listening to Senator Murray, that disclosure of all individuals who earn more than a particular amount may lead to a significant amount of disclosure that is actually not relevant to shareholders for governance purposes. You could have a whole lot of people running around doing things that may not actually help the objective that you are striving for. If I understand Senator Murray’s proposal correctly, it would catch, to use the colloquial term, ‘screen jockeys’ and require their remuneration to be disclosed. They are clearly people who are highly remunerated, but I do not think anyone is going to be asserting that they have any significant influence on the overall management of the company. The way the actual proposal is framed has a certain awkward angle to it in specifying which figures are to be relied on, given that they are updated quarterly. It is for those reasons, rather than taking issue with the fact that if somebody is highly remunerated this has an influence on the governance of the company—and this has been reflected in the bill—that we will not be supporting the amendment. It is for those reasons, rather than that we disagree with the central proposition, that we will not be supporting the amendment.

Senator CONROY (Victoria) (6.24 p.m.)—I indicate that Senator Murray’s arguments have been quite compelling. While I doubt the government will be willing to accept this one at the end of the day, Senator Murray, I think your proposal has merits and Labor will support it.

Question agreed to.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (6.25 p.m.)—by leave—I move government amendments (101) to (104) on sheet PK247:

(101) Schedule 6, page 195 (after line 12), after item 1, insert:

1A Before subsection 674(3)

Insert:

(2B) A person does not contravene subsection (2A) if the person proves that they:

(a) took all steps (if any) that were reasonable in the circumstances to ensure that the listed disclosing entity complied with its obligations under subsection (2); and

(b) after doing so, believed on reasonable grounds that the listed disclosing entity was complying with its obligations under that subsection.

(102) Schedule 6, page 195 (after line 20), after item 2, insert:

2A Before subsection 675(3)

Insert:

(2B) A person does not contravene subsection (2A) if the person proves that they:

(a) took all steps (if any) that were reasonable in the circumstances to ensure that the disclosing entity complied with its obligations under subsection (2); and

(b) after doing so, believed on reasonable grounds that the disclosing entity was complying with its obligations under that subsection.
These amendments deal with continuous disclosure. Amendments (101) and (102) will insert a due diligence defence for persons involved in a contravention of the continuous disclosure obligations. The defence requires that the person will have taken all steps that were reasonable in the circumstances to ensure that the disclosing entity complied with its continuous disclosure obligations and believed on reasonable grounds that the entity complied with these obligations. Amendments (103) and (104) are for the purposes of clarification.

Senator MURRAY (Western Australia) (6.26 p.m.)—I like these amendments, Minister. It is a good adjustment to the act. Question agreed to.

Senator CONROY (Victoria) (6.26 p.m.)—I move opposition amendment (35) on revised sheet 4216:

(35) Schedule 6, item 9, page 210 (after line 32), after section 1317DAJ, insert:

1317DAK Publication in relation to statement of reasons

(1) If ASIC issues a statement of reasons to a disclosing entity, ASIC may publish the following details in relation to the statement of reasons, that:
   (a) ASIC believes that the disclosing entity has contravened subsection 674(2) or 675(2); and
   (b) ASIC has issued a statement of reasons to the disclosing entity; and
   (c) the disclosing entity has an opportunity to appear before ASIC at a private hearing in relation to the alleged contravention.

(2) Where ASIC publishes details of the statement of reasons in accordance with subsection (1), the details must include a statement that:
   (a) the disclosing entity is not regarded as having contravened the provision specified in the statement; and
   (b) that following the outcome of the hearing, ASIC may issue an infringement notice or may choose not to issue an infringement notice in relation to the alleged contravention.

One of the most controversial aspects of the CLERP 9 bill is the power granted to ASIC to issue infringement notices in relation to breaches of the continuous disclosure regime. Labor supports this power. We see it as a mechanism to enhance ASIC’s regulatory tool kit. We believe that presently ASIC does not have sufficient regulatory tools at its disposal to effectively enforce the continuous disclosure regime. In March of last year ASIC reached a $100,000 settlement with AMP following an investigation by ASIC in relation to AMP’s disclosures to the market during 2002. ASIC said that if a fining regime had been in place then a $100,000 fine would have been appropriate but, as there was no power to levy a fine, AMP agreed to make a community education contribution of $100,000 as a substitute.

In Australia, companies are quick to disclose the good news and slow to disclose the bad, so it is time ASIC had the teeth it needs to enforce the continuous disclosure regime. However, ASIC is prevented from disclosing to the market that it has issued an infringement notice and is prevented from disclosing to the market that it is investigating a breach of the continuous disclosure regime. The quite ludicrous proposition being put forward here is that ASIC is going to be guilty of breaching continuous disclosure laws because it is not going to tell the market of a material fact.
In Labor’s view this is market relevant information. Accordingly, we believe that the market should know if ASIC is investigating an alleged breach. That is why we are moving an amendment which gives ASIC the power to disclose to the market that it has issued a statement of reasons and that the company has an opportunity to appear before ASIC at a private hearing in relation to the alleged contravention. This is not a requirement; it is an option for ASIC to use in circumstances where it believes the market should be informed about the alleged contravention.

We have also built safeguards into the amendment. If ASIC chooses to publicise the fact that it has issued a statement of reasons then ASIC is also required to include in the publication a statement that the company has not contravened the provision and that, following the outcome of the hearing, ASIC may choose not to issue an infringement notice. We want to get the balance right. We want to ensure that companies are not put on show trial, but it is clear that if ASIC is conducting an investigation of a corporation it is a market-sensitive issue and should be disclosed to the market so that shareholders can respond accordingly.

Sitting suspended from 6.30 p.m. to 7.30 p.m.

Progress reported.

BUDGET
Consideration by Legislation Committees Report

Senator EGGLESTON (Western Australia) (7.31 p.m.)—On behalf of the Chair of the Finance and Public Administration Legislation Committee, Senator Mason, I present the committee’s report in respect of the 2004-05 budget estimates, together with the Hansard record of the committee’s proceedings.

Ordered that the report be printed.

BUSINESS
Rearrangement

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.31 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 3 (Anti-terrorism Bill 2004).

Question agreed to.

ANTI-TERRORISM BILL 2004
Second Reading

Debate resumed from 15 June, on motion by Senator Troeth:

That this bill be now read a second time.

Senator LUDWIG (Queensland) (7.32 p.m.)—I rise to speak on the Anti-terrorism Bill 2004. This bill makes changes to four pieces of legislation: the provision in the Crimes Act 1914 allowing the police to detain and question persons being investigated for terrorism offences; the provision in the Crimes (Foreign Incursions and Recruitment) Act 1978 prohibiting persons from engaging in hostile activity in a foreign state; the offence in the Criminal Code Act 1995 relating to membership of, and training with, terrorist organisations; and the provisions in the Proceeds of Crime Act 2002 enabling courts to make orders for the confiscation of ‘literary proceeds’ of criminal activity.

The bill was the subject of an inquiry by the Senate Legal and Constitutional Legislation Committee, which delivered a bipartisan report on 11 May. In the bipartisan report, Liberal and Labor members of the committee recommended several amendments to the bill. On 12 May, the shadow minister for homeland security wrote to the Attorney-General indicating the opposition’s acceptance of these recommendations and support for the amendments to implement them. In the letter the opposition urged the Attorney-
General to continue the bipartisan approach to the legislation displayed by the Senate committee. Regrettably, whilst the government has accepted the need to make changes to its proposed amendments to the Crimes Act and to the Crimes (Foreign Incursions and Recruitment) Act, it has rejected the recommendations, endorsed by its own senators, for changes to the proposed amendments to the Proceeds of Crime Act.

I will first address the amendments to the Crimes Act 1914 dealing with the police detention of terrorist suspects, which, in Labor’s view, are the most significant provisions of the bill as it currently stands. I will make a number of points about these amendments. Prolonged detention of citizens without charge is an extraordinary measure which should only be sanctioned in exceptional circumstances where it is necessary to counter a demonstrated and urgent threat to the safety of the community. Labor has carefully considered the case put forward by police commissioners and in particular by Australian Federal Police Commissioner Keelty in light of the AFP’s experience in investigating the Bali terrorist bombings. Their comments followed earlier calls by experts such as Professor George Williams, in October 2002, to review the adequacy of part 1C of the Crimes Act in the new threat environment, as well as moves by the United Kingdom and Canada to strengthen their own laws in this area.

We believe a case has been made by our law enforcement agencies for these amendments to deal with the unique challenges of international terrorism investigations. We are persuaded that these amendments are needed to enable the gathering of evidence that would be admissible in an Australian court. This is not something that can be done using the powers given to ASIO last year, which were conferred for the different purpose of gathering intelligence that may help avert a terrorist attack. That said, we do not see this bill as establishing a precedent for the future extension of these amendments to other areas of law enforcement. We are reassured by the fact that the bill preserves the existing safeguards for suspects detained as part of a police investigation, including the right to silence, the right to seek legal representation and the supervision of extensions of time by a judicial officer.

We believe that, consistent with other anti-terrorism legislation passed by this parliament since September 11, it is appropriate to ensure that the operation of these amendments is subject to an independent review after three years. Labor are certainly committed to that review; however, we have not yet heard the same commitment from the government. One of the bipartisan recommendations of both Liberal and Labor members of the Senate committee was that the use of the new ‘dead time’ provision relating to overseas inquiries only be available upon successful application to a judicial officer. We are pleased that, following Labor’s representations, the government has agreed to an amendment to this effect. I will address this issue further at the committee stage of the bill.

I turn to the Crimes (Foreign Incursions and Recruitment) Act 1978, the next act subject to amendment by the government. The opposition sees sense in updating the 1978 act following more recent examples of state-sponsored terrorism, such as al-Qaeda in Afghanistan and earlier in the Sudan, and accordingly supports these amendments. I should note in passing that it has been implied, if not stated, by the government that the need for these amendments was in part demonstrated by the case of David Hicks. This suggestion, like all of this government’s statements about Mr Hicks and Mr Habib, cannot go unquestioned. Overnight—from last Thursday to Friday—the United States
finally particularised its allegations against Mr Hicks, some 2½ years after he was detained. They cover alleged training and other activities with the KLA in Kosovo, LET in Pakistan and al-Qaeda in Afghanistan.

Read in light of these alleged particulars, it is not at all self-evident that the Crimes (Foreign Incursions and Recruitment) Act has no application to Hicks’s case, bearing in mind that section 6(3)(aa) of the act, inserted in 1987, does not require armed hostilities to be directed at the government of the foreign state and that not all of Mr Hicks’s alleged activities appear to have been with government forces. The government has never made public the legal advice it has received about Hicks, but there is more than a little suspicion that the problem is not so much with the act as with obtaining admissible evidence. With or without these amendments, the application of the act to Hicks is, in our view, not a closed question.

One flaw, identified by Liberal and Labor senators, in the drafting of these amendments was the absence of criteria to guide the exercise of the proposed new power to make regulations prescribing organisations. Again, Labor made representations to the government to rectify this. We are pleased that the government has agreed to move an amendment, which I will also speak to at the committee stage when dealing with that matter.

I now turn to the amendments to the membership and training offences in the Criminal Code Act. Again, the opposition supports these amendments. Self-evidently, the more controversial and complex of these amendments are those to the training offence, as they introduce a modified form of strict liability to an offence which carries a heavy penalty, placing a significant burden on an accused. Again, we have carefully considered this proposal in light of evidence about the extent of the problem of training with terrorist organisations. For example, the ASIO director, Mr Dennis Richardson, stated in his November 2003 report to parliament:

ASIO is aware of a number of Australians who have received terrorist training since the late 1990s. The level of instruction received by these individuals ranges from basic military training to advanced terrorist tactics. Identifying other Australians who have undertaken terrorist training remains a priority.

This was not the only statement made in respect of this point. The Australian Federal Police Commissioner, Mick Keelty, told the Senate committee examining this bill:

From my perspective ... the investigation into the Bali bombings opened up our eyes to how many people have been training, for example, as part of Jemaah Islamia.

He did not leave it at that. He went on to say:

We have a large number of people who potentially could act as terrorists, who have been given the training to make the bombs. We saw the technology of detonating bombs by mobile phone in the Bali bombings and we have now seen it in the Madrid bombings. The speed at which this new technology is passing through the hands of training camps is extraordinary. The speed at which the Jemaah Islamia bombers learnt new technologies to avoid detection—and I am talking about the two outstanding suspects—has been incredible. So we have to have some major deterrent for people who are involved in the process of training these people but also for people who subject themselves to the training to potentially act as terrorists.

You can see that these statements highlight the real concerns of our frontline agencies about Australian involvement in terrorist training. Therefore, on balance, we are satisfied of the need for parliament to strengthen the training offences in the Criminal Code.

Finally, I turn to the amendments to the Proceeds of Crime Act. It should be acknowledged that the Proceeds of Crime Act already covers a substantial portion of literary proceeds that could be derived from ter-
rortist activity. The grave and unique nature of terrorism is already recognised in the act, which excludes terrorism from the statute of limitations applying to all other offences, which, as you know, Acting Deputy President Hutchins, is six years. The residual category of terrorist literary proceeds that would not be covered are, firstly, those derived overseas and transferred to Australia or, secondly, those derived from overseas terrorist activity which predates the enactment of antiterrorism legislation in Australia in mid-2002. We are not opposed to amendments that close these loopholes, although, as Liberal and Labor members of the Senate committee unanimously concluded, these amendments do have a retrospective operation. In this respect, the explanatory memorandum, which asserts otherwise, is simply wrong and should be corrected. This government should take the initiative and amend it today.

Labor certainly agrees with the unanimous recommendation of the committee that the independent review mandated by section 327 of the Proceeds of Crime Act should examine the impact of the retrospective operation of these amendments and, in particular, whether they have had implications beyond the area of terrorist literary proceeds.

In considering these amendments, we have had regard to the fact that two key safeguards in the current act are maintained. Firstly, the civil burden remains on the prosecution to prove on the basis of evidence that the person committed a terrorist offence. For example, in the cases that the Howard government plainly has in its cross-hairs—Mr Hicks and Mr Habib—the court is certainly not obliged to recognise any conviction by a Guantanamo Bay military commission as conclusive of this issue. Indeed, a cursory look at the principles of private international law suggests a person could mount a pretty good argument that such a conviction should be treated with scepticism by an Australian court on public policy grounds. Secondly, the court retains the ultimate discretion whether or not to make a literary proceeds order at all, and if it does make such an order, whether to confiscate all or only some of the profits. Under the act the court must take into account a range of factors when determining whether to make an order. Those factors include the nature and purpose of the product or activity from which the proceeds were derived; whether supplying the product or carrying out the activity was in the public interest; and, lastly, the social, cultural or educational value of the product or activity.

In this area, Liberal and Labor members of the Senate committee made bipartisan recommendations for two amendments to the bill: that item 24 of the bill be amended to remove the words ‘or indirectly’, and item 26 of the bill be amended to omit the proposed reference to United States military commissions. Regrettably, the government has chosen not to continue the bipartisan approach of the committee and has refused to amend the bill in this way. Accordingly, Labor will be moving these amendments at the committee stage. If the government fails to support them, we are fully committed to implementing them if elected. I will discuss these issues further during the committee stage of the bill. I am only foreshadowing at this point some of the issues that may be aired during that debate.

Before concluding my remarks in the second reading debate, I should also foreshadow that Labor has announced its support for the amendments to be moved by the government relating to bail and minimum non-parole periods following the Roche and Khazal cases. We recognise these are extraordinary measures but, having considered them closely and the serious offences to which they relate, we believe they are in the national interest and necessary to ensure that the law is more
closely aligned with community expectations. Consistent with our existing commitment to ensure the operation of the amendments to the Crimes Act after three years, it almost goes without saying that we will include the proposed amendments relating to bail and non-parole periods in any such review.

Senator GREIG (Western Australia) (7.48 p.m.)—Senator Ludwig was judicious in his repeated use of the term ‘bipartisan’ to describe support for the Anti-terrorism Bill 2004. While it is true that there are two parties in this place which support the legislation, we are of course a multiparty parliament and it would be wrong to conclude that bipartisan support meant unanimous support. It does not. We on the crossbench, certainly we Democrats, oppose this legislation.

Here we are once again debating yet another set of what we argue are flawed antiterrorist initiatives on the part of the government—initiatives which have been the subject of understandable and widespread community opposition and which were strongly criticised in evidence before the Senate’s Legal and Constitutional Legislation Committee. We Democrats are committed to keeping Australians safe from terrorism and for this reason have given careful consideration to each of the proposals the government has presented to combat terrorism. Some of these proposals we have supported and some we have not. In each case we have considered whether there is any justification for the new powers being proposed by the government. This has involved looking at, firstly, whether there is a demonstrated deficiency in existing law; secondly, whether there is any evidence to suggest that the new powers will be effective in addressing threats to security; thirdly, whether any infringement of rights and liberties associated with the proposal is vital and necessary in order to protect the safety of Australians; and, finally, whether the government has considered alternative measures that might be more effective or appropriate under the circumstances. Unfortunately, the vast bulk of the government’s antiterrorism proposals we believe have failed these tests, even after extensive amendment by the Senate. Accordingly, we have voted against them, although there have been a number of worthy proposals which the Democrats have been willing to support.

The threat of terrorism is real and has serious implications for Australia’s security. However, ‘national security’ is also a vague concept which can be relied upon as a blanket justification for increasing powers and winding back the rights and freedoms of individuals. As parliamentarians, we are charged with the responsibility of making laws for the ‘peace, order and good government of the Commonwealth’. Clearly, this includes a responsibility to ensure that the government has the legislative capacity to protect Australia’s national security, but it also includes the very important responsibility to ensure that the fundamental rights and freedoms of Australians are not violated in that process.

I indicate again from the outset that we Democrats strongly oppose the vast majority of the measures within this bill. The bill makes a range of amendments to the Crimes Act, the Crimes (Foreign Incursions and Recruitment) Act, the Criminal Code Act and the Proceeds of Crime Act. It will extend the period for questioning of suspects arrested on terrorism charges by 20 hours—that is, to a maximum of 24 hours—upon application to a judicial officer. It will allow for dead time during questioning for the purpose of obtaining information from other countries in different time zones. It will limit the exemption that currently applies under the Crimes (Foreign Incursions and Recruitment) Act for persons who serve in or with the armed forces of a government of a foreign state by
providing that the exemption does not apply to persons who serve in or with a prescribed organisation.

It will remove the requirement that, in order for a person to be charged with an offence under the foreign incursions act, the person must have been in Australia or an Australian citizen or resident during the year preceding the commission of the offence. It will increase the maximum penalty for an offence under the foreign incursions act from 14 to 20 years. It will empower the minister to issue an evidentiary certificate attesting that a group or organisation was not part of the armed forces of a foreign state at any given time. It will create an offence of membership of an organisation that is found by a court to be a terrorist organisation—as opposed to a terrorist organisation prescribed by regulations. It will amend the offence of training with a terrorist organisation to reverse the onus of proof in relation to recklessness.

It will amend the Proceeds of Crime Act so that a person is prohibited from obtaining literary proceeds within Australia or transferring literary benefits to Australia in relation to the commission of a foreign indictable offence. It will expand the definition of ‘literary proceeds’ to include the commercial exploitation of a person’s notoriety resulting directly or indirectly from the commission of an indictable offence—for example, this would include notoriety resulting from the detention of a person. It will also expand the definition of ‘foreign indictable offence’ to include an offence triable by a military commission of the United States.

Like most of the government’s antiterrorism initiatives, this bill has been the subject of considerable and understandable community criticism not only to the Senate Legal and Constitutional Legislation Committee but also through broader community campaigns and in direct communications with members and senators. In its evidence before the committee, Amnesty International testified that it was very concerned with the bill and that it ‘could be used to give legislative legitimacy that would otherwise be a contravention of international human rights standards’.

Associate Professor Joo-Cheong Tham made the point that not only are the provisions of this bill concerning but the context in which it is being introduced is particularly disturbing. We now have extensive legislative infrastructure to combat terrorism, based on broad criminal liability, sweeping executive powers and significant departures from established community standards and there is ‘a grave risk of these exceptions being normalised’.

There are now more than 15 pieces of antiterrorism legislation within Commonwealth law. And the pattern that we see emerging is that, once a piece of legislation has been passed, the government then attempts to increase its powers under that existing legislation. This is obviously a relevant consideration when we are examining legislation such as this, where improvements and safeguards are introduced by the Senate, because experience shows that the government may attempt to remove these safeguards at a later date.

We Democrats are pleased that the government and opposition have chosen to take up some of the recommendations made by the Senate Legal and Constitutional Legislation Committee. It is disappointing, however, that among the government’s amendments there are new, regressive measures to reverse the presumption in favour of bail. This is a long-held principle and is closely related to the presumption of innocence. It is founded on the notion that deprivation of liberty should, as far as possible, be tied to convic-
tion for a criminal offence. Individuals charged with a crime are innocent until proven guilty and the presumption in favour of bail reflects this. If a suspected terrorist presented a risk to the community then that would be taken into account by the bail authority, who would be likely to refuse bail. Given this, it is difficult to see why there is any need to reverse the presumption in favour of bail.

We Democrats have a range of other concerns in relation to this bill. Firstly, in relation to the amendments to the Crimes Act 1914, we argue that there is a lack of any compelling justification for an extension of the investigation period in relation to terrorism offences, particularly since no such extension has been considered necessary in relation to other complex, multijurisdictional offences.

The Democrats question the necessity of increasing the investigation period for terrorism offences when ASIO already has extensive detention and questioning powers in relation to terrorism. During debate on the ASIO powers, we noted that there was some ambiguity as to whether the underlying purpose of the powers was intelligence gathering or criminal investigation. Despite attempts by the Democrats to resolve this ambiguity by way of amendment, it is now enshrined in the legislation. For this reason, we are unconvinced by the AFP’s argument that the respective regimes have different underlying purposes and safeguards. Once again, I take the opportunity to express the Democrats’ concern regarding the broad definition of a terrorist act under Commonwealth anti-terrorism legislation and the potential that this creates for individuals who are not terrorists to be charged with terrorism offences.

We are deeply concerned that the bill permits the extended detention of children and Aboriginal and Torres Strait Islanders for more than 20 hours. We note the very real concerns expressed by Amnesty International that this may breach article 37 of the Convention on the Rights of the Child and very probably breaches the recommendations from the royal commission into black deaths in custody.

Additionally, we Democrats believe that the power to grant an extension of time for the investigation period should be restricted to magistrates and should not be vested in justices of the peace, or persons authorised to grant bail. We are also concerned by the potential for unlimited dead time during the investigation period and believe that the bill should set out a maximum period of detention, including dead time.

In relation to the proposed amendments to the Crimes (Foreign Incursions and Recruitment) Act, we Democrats are yet to be convinced that they are necessary, given that the government already has powers to proscribe armed forces engaged in hostilities under the Criminal Code. We take this opportunity once again to reiterate our strong opposition to the proscription regime. Whilst the government must be legislatively equipped to combat the threat of terrorism, we also believe that it should target criminal behaviour, not thought or association.

We are very concerned by the lack of criteria for proscribing organisations under the proposed amendments. It is really quite incredible that the Attorney-General’s Department has conceded that the amendments would enable it to proscribe the Scouts if it wanted to. It is for this reason that there is a desperate need to include criteria for proscribing organisations. Like many of the submissions to the committee, the Democrats have concerns regarding the use of ministerial certificates. Given the heavy penalties which apply to offences under the foreign incursions legislation—which, of course,
will be increased by this bill—the Democrats believe that the prosecution should be required to present compelling evidence to establish each of the elements of the offence.

In relation to the amendments to the Criminal Code Act, the Democrats’ primary concerns relate to the broad and imprecise definitions. In particular, we are concerned by the scope of the definition of a terrorist organisation and the potential for this definition to incorporate legitimate resistance movements. It is also unclear what it means to be a member of an organisation or to have received training from an organisation. For example, would a person be classified as a member of an organisation by virtue of having attended a meeting of that organisation? Unless these terms are more tightly defined, there is a very real risk that the legislation will capture individuals who are not in any way associated with terrorism. The Democrats also oppose the strict liability provision in section 102.5 of the bill. This provision will essentially reverse the onus of proof for recklessness, thereby compromising the presumption of innocence until proven guilty.

In relation to the amendments to the Proceeds of Crime Act, we Democrats have a long record of opposing retrospective legislation. We take the view that one of the functions of the law is to provide certainty to individuals in the ordering of their affairs and the decisions they make. Retrospective changes to the law compromise the ability of individuals to make informed choices about how they live their lives, as they can never be certain that a particular act which is legal at the time will not subsequently be made illegal. Although the retrospective changes to the Proceeds of Crime Act do not give rise to criminal liability, they do have the potential to detrimentally affect the rights of individuals.

The Democrats share the concerns of the Senate Legal and Constitutional Legislation Committee regarding the concept of indirect notoriety. We are also concerned that the test relating to literary proceeds does not require a person to have been convicted of an indictable offence—the court simply needs to be satisfied that they have committed such an offence. We do not see how a court could properly establish that a person has committed an indictable offence other than after a trial in which all the relevant evidence has been presented to the court. Like the legal and constitutional committee, we strongly oppose any recognition of United States military commissions. We have consistently expressed the strongest opposition to the regime at Guantanamo Bay and the use of military commissions to try detainees.

The procedures which will be used in these military commissions are the antithesis of those which apply in criminal proceedings under Australian law. Apart from being completely secretive, the entire proceedings are subject to presidential direction. They have been set in motion as a result of a direction from the President, and if the President disagrees with the ultimate finding of the tribunal then he can simply reverse it. Given the inherent flaws in this process, it will be impossible to trust the verdicts that emerge from these commissions. The Democrats believe it is a huge mistake for the government to in any way recognise or give legitimacy to these commissions.

It will be clear from my remarks that many of the concerns which the Democrats have in relation to this bill will remain even if all the government and opposition amendments are passed. We believe that this bill, like the vast majority of the government’s other anti-terrorism initiatives, is so significantly flawed that we cannot bring ourselves to support it. Thus, we will be voting against it.
Senator NETTLE (New South Wales) (8.04 p.m.)—I rise to speak in the debate on the Anti-terrorism Bill 2004. The Greens have consistently opposed legislation regarding terrorism that abrogates fundamental civil and political rights. We have consistently argued that the existing normal criminal law—murder, damage to property and conspiracy—with its important checks and balances, is more than adequate to address criminal acts commonly described as terrorism. History shows that emergency legislation passed in periods of martial law and conflict can very easily become the norm and lead to a culture and practice of human rights abuse by security and police agencies.

The Greens have supported sensible changes to security arrangements—such as the Aviation Transport Security Bill 2004, which seeks to improve security in the aviation industry—but we remain concerned that the war on terrorism is leading to a permanent violation of fundamental human rights in this country and around the world. These fundamental rights include the right to a lawyer, the right to a fair and open trial, the right to be presumed innocent until proven guilty and the right not to be detained without charge. Generally Labor has succumbed to the threat of being labelled soft on terrorism and supported the government’s bills with minor changes. That appears to be the case with this piece of legislation also. Like law and order at a state level, terrorism threatens to become an annual auction in which the major parties compete to remove our fundamental human rights.

An eminent American liberal philosopher, Professor Richard Rorty, has said:

Further attacks are likely to persuade those elites—those in the West—they must destroy democracy in order to save it.

In the worst-case scenario, historians will have to explain why the golden age of Western democracy lasted only about 200 years.

I will now go to the detail of what is proposed in this latest round of antiterrorism legislation—draconian legislation that impacts on our civil and political rights—and go through the specific clauses of the bill. The clauses of the bill that seek to amend the Crimes Act to create new police powers will give both state and federal police the power to hold terrorism suspects for up to 24 hours for questioning before being charged, rather than the current 12 hours. In practice this could mean detention for much longer: up to two to three days and potentially indefinitely, as the clock can be stopped—we do not know if it can be stopped multiple times—for various reasons, including for a period equivalent to the time difference between Australia and another country whose law enforcement agencies need to be consulted by Australia for information needed in the investigation.

These new powers are unnecessary. ASIO already has extensive detention and questioning powers for up to seven days, which it has used. We do not know a lot about these powers because those subject to them are banned from speaking about their experience. We opposed these new powers for ASIO; now that they are in place, we do not understand why the AFP and state police believe they also need these powers. The government has not made a case for the necessity for these new powers. Is there some sort of turf war between the AFP and ASIO? Is it a case of police agencies seeing this as a chance to increase police powers? Or is it a case of the government trying to wedge Labor and Labor saying, ‘No way,’ and therefore bucking the bill? It has been suggested that the investigation of terrorism is different, that it is more complex; but there are equally complex cross-jurisdictional offences, such as corpo-
rate fraud and organised crime, for which the police have not asked for these powers—at least, not that we know of. These powers could lead to a greater number of people being charged with terrorism offences as a mechanism for holding people for a longer period of time and bargaining, so to speak, with suspects over what they will be charged with.

This bill also seeks to amend the Crimes (Foreign Incursions and Recruitment) Act. This part of the bill allows the government to make criminals of Australians and others fighting with overseas armies, whether or not the individual or the army has engaged in criminal acts. It extends the effect and the scope of the minister’s power to ban organisations, a power which the Greens opposed and continue to oppose. It is unnecessary, given existing powers and offences under the existing banning and proscription regime, and it is worse because the criteria proposed by the government amendment are even looser than the broad-brush definition of terrorism which is in the current proscription regime. The Attorney-General can list whomever they want. Criteria such as armed hostilities against a foreign state allied or associated with Australia would mean that the West Papuan freedom movement could be proscribed, as could have been the East Timorese independence movement and the ANC.

The use of certificates as evidence means that the prosecution is not required to prove its case. The certificates proposed are merely statements from the minister. The minister writing something down is what a certificate is in this legislation. This is then taken as prima facie evidence and no further proof or evidence is required. If a defendant says that they were working with the British military at the time the offence relates to and the minister writes down on a piece of paper, ‘No, they weren’t working with the British military at that time,’ that is taken as prima facie evidence in the court. That is utterly unacceptable.

Another part of the legislation seeks to amend the Criminal Code Act to create a reckless forms of terrorism training offence. This makes it an offence to train with a banned organisation, whether or not you know the organisation has been banned. Given the broad scope of the terrorism definition, that could include resistance movements in many places, from Tibet to West Papua. Given that membership of terrorist organisations can include informal members, recklessness in relation to somebody training you or you training someone is also more possible. These are strict liability offences. There is no requirement to show intent or knowledge. For example, the US pilots who trained the people who flew the planes into the World Trade Centre would have committed an offence under this measure. Strict liability should not apply to such serious offences, especially with such serious penalties involved as are in this legislation.

This legislation also seeks to amend the Proceeds of Crime Act 2002. It expands the scope of the Proceeds of Crime Act in preventing people from receiving payments for publishing information about offences for which they have received a conviction, which would cover issues indirectly related to the offence, such as imprisonment at Guantanamo Bay. The retrospective effect of this component of the legislation should be opposed on principle. It is also a form of double jeopardy, where somebody is being punished twice: once for their imprisonment and then through their inability to profit from talking about their imprisonment, whether they have been convicted or not. It prevents the receipt of proceeds that come from indirect notoriety and it could prevent discussion not only about conditions at Guantanamo Bay, Abu Ghraib and the Bagram Air Base...
but also about conditions in Australian prisons.

This could undermine the important prison reforms that have come about through people writing about crime and about their prison experience. The legislation in this component of the bill does not even require somebody to have been convicted in order for them to not be able to write and gain profit from the story of the experience of imprisonment they have suffered. Many offences against foreign law which are included in this component of the legislation exist as a result of unjust and repressive legal systems in other countries. For example, under this legislation the students of the Tiananmen Square massacre could not publish or receive profit from writing about their experiences.

The next section of the legislation includes, as I mentioned before, the US military commission at Guantanamo Bay. It seeks to include the military commissions in the definition of foreign indictable offences. This is to recognise the legitimacy of the United States military commission trials of Guantanamo Bay suspects by including the conviction by military commission within the definition of criminal offences covered by the Proceeds of Crime Act. Whilst commissions have already been recognised in this parliament for the purpose of prison transfer, this is the first time that Australian law has recognised the negative consequences that could flow from these kangaroo courts. Senator Brown and I have spoken in this chamber, as has the member for Cunningham in the other place, about the problems with these military commissions. I will point out some of the problems that the International Commission of Jurists has highlighted. They include the failure to determine prisoner of war status under the third Geneva convention. Article 84 of the third Geneva convention provides:

> In no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality as generally recognized ...

The failure of the United States to establish article 5 tribunals to determine the status of detainees at Guantanamo is a breach of the convention and in marked contradistinction to the current conduct in Iraq, where an article 5 tribunal made up of three military officers began examining individual cases on 19 April 2003. A lack of sufficient due process guarantees and procedural safeguards and a lack of an independent and impartial tribunal—ultimately President Bush is judge, jury and executioner—is a breach of article 14.1 of the International Covenant on Civil and Political Rights, which requires an independent and impartial tribunal. President Bush can hardly be called that, having already labelled those people in Guantanamo Bay as ‘bad men’. There are restrictions on the rights of lawyers and the ability to conduct an effective defence, and an extension of military jurisdiction over non-military conduct. Evidence that can be included in these military commissions is such as would not be accepted in a court of law, either in this country or in the United States.

The government also proposes a series of amendments to this legislation, which we will discuss further in the committee stage of this debate. A significant proportion of these amendments go to another key area of this legislation—that is, to ensure that bail is not given to terrorist suspects and that non-parole periods are extended. The amendments remove the right to bail except in exceptional circumstances. They create mandatory minimum parole periods for terrorism offences, treason, treachery and espionage. This is unprecedented in Australian law, except for mandatory sentencing in the Northern Territory and Western Australia.
These proposals attack judicial independence, the importance of discretion of the judiciary to decide important matters such as pre-trial custody or detention and an appropriate length of sentence based on the individual and particular circumstances of the crime and the defendant. They are arbitrary and quite possibly in breach of the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, there being no exemption, we understand, for children. It is a disgrace that the government is trying to rush through these draconian amendments to remove bail and bring in mandatory minimum parole periods with no inquiry into what is being proposed and with virtually no public discussion. It appears that Labor also believes it is acceptable not to have public debate on this move in Australian law which is unprecedented except, as I mentioned, for mandatory sentencing in the Northern Territory and Western Australia.

These proposals for bail and parole laws will see young Islamic men and women—perhaps those from Western Sydney whom I met in my office this afternoon—locked up for a very long period of time on the basis of unfair investigations and trials. A 19-year-old medical student from the University of New South Wales, Izar ul-Haque, had a bail hearing in Sydney not so long ago. At that bail hearing and in the lead-up to the bail hearing, the prosecution identified this young man as posing no threat to the community. He was subsequently granted $200,000 bail, having had the prosecution say that he posed no threat whatsoever to the community and having had prison officers from the Department of Corrective Services in New South Wales saying, ‘I don’t know why this young man was put into the Supermax prison at Goulburn.’ Normally there is a risk assessment process for prisoners to be put in such a prison. That process takes a week, but this young man went straight into Supermax—the most draconian part of the New South Wales criminal justice system. This young man went straight there, and the prosecution said at his bail hearing, ‘He poses no threat to the community.’

Under the proposal by the government to remove the capacity for bail in terrorism offences, there is no way this young man would be back at the University of New South Wales doing his medical exams, as he is at the moment. As his lawyer said, this young man may well make a very fine doctor in the future. If Izar ul-Haque were put in prison after rather than prior to this legislation going through—if it does go through—he would not be going back to the University of New South Wales to do medical exams to perhaps become a fine doctor one day. He would be locked up in the Supermax prison in Goulburn jail, with the corrective services officers in that area not understanding why he was there and the prosecution having said that he posed no threat to the community. That will be the effect of this legislation. That will be the effect of these proposals the government is putting forward. But the opposition believes it is appropriate to simply let the legislation go forward and support it with no public inquiry, no public debate. This has been an enormous issue. In Sydney the treatment of Izar ul-Haque has been an enormous issue for the Muslim community, yet the opposition seems to think it is fine to just let the legislation go through.

Eight members of the Muslim community from New South Wales, the ACT and Victoria were talking to me in my office today about the impact on their community of this kind of terrorism legislation going forward. These Muslim community representatives who were in my office today were telling me that—as I know from colleagues—there are members of the Muslim community in Sydney, particularly women, who are afraid to
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They faced 200 hours of community service. That was a non-Muslim Anglo member of community. Every Muslim community individual who has been picked up in similar circumstances has been tried under terrorism legislation. No wonder the Muslim community feels that there are two systems of justice in this country. They are taking tremendous steps to try to combat this within the community. They are getting information about what is actually in this legislation because the sense of fear within the community is enormous. People feel that they cannot pick up the phone, they cannot go to a protest, they cannot go out of their houses and they cannot support their community organisations. That is the result of terrorism legislation that we are seeing this government bringing in. And now we see another lot—legislation that seeks to lock up a young medical student from the University of New South Wales so that he cannot become a doctor. He gets locked in Supermax. (Time expired)

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.24 p.m.)—At the outset I thank senators for their considered contributions to the debate. This is a very important issue for Australia and of course it is another measure in the raft of provisions that the government has put in place in relation to counter-terrorism in this country. The Anti-terrorism Bill (No. 2) 2004 builds on Australia’s existing counter-terrorism laws in critical areas and continues this government’s practice of proactively updating our legal framework in light of the current terrorist environment. It contains important measures to give police the operational flexibility they need to fairly obtain reliable and credible evidence in terrorism investigations while maintaining the long-standing protections entrenched in the Crimes Act. It tightens the provisions of the Crimes (Foreign Incursions and Recruit-
ment) Act so that Australians and residents can be prosecuted if they serve in any capacity with a terrorist organisation in or with the armed forces of a foreign state. It improves the offences targeting those who take up membership in terrorist organisations and ensures these offences are consistent with the other terrorist offences in the Criminal Code. It also enhances the offences of providing training to or receiving training from a terrorist organisation. It also severely restricts the possibility for people to cash in on their notorious connections with terrorism by reaping the benefits of selling their stories.

This bill was introduced into the House on 31 March 2004 and was immediately referred to the Senate Legal and Constitutional Legislation Committee. The committee reported on the bill on 11 May this year. The government has now considered that report and has prepared some amendments to give effect to some of the Senate committee’s recommendations. Of course, not all of the committee’s recommendations called for amendments to the bill. I might just touch now on some of those amendments, but before I do I want to place on record the government’s appreciation of the work done by the Senate Legal and Constitutional Legislation Committee, which really does a lot of good work in the Senate in relation to the review of legislation.

Firstly, government amendments (1) to (3) deal with a question of bail, and that has been the subject of comment, I know, by senators who have been addressing this bill tonight. The government is convinced that Australia’s bail laws should treat suspected murderers and terrorists in the same way. At the moment they are treated differently according to the separate bail regimes in the states and territories. The Australian community rightly expects that its laws provide adequate protection from terrorism. Proposed item 1A of government amendment (2) would update the bill to provide for a national solution to bail for terrorism offences rather than relying on a patchwork of bail laws to be updated by the states and territories. Persons charged with or convicted of federal terrorism and other related offences would face a presumption against bail unless a bail authority were satisfied that exceptional circumstances justified the granting of bail. If a person failed to persuade the bail authority that exceptional circumstances existed, they should be refused bail. The offences to be covered by this presumption against bail are described in proposed subsection 15AA(2). They include all the terrorism offences in the Criminal Code and other relevant offences such as treason, espionage, and treachery in certain circumstances, as well as federal offences that equate with murder. Proposed clause 1A of government amendment (1) ensures that this bail provision only operates for persons charged with or convicted of relevant offences prospectively.

Another aspect of government amendments (1) to (3) concerns a minimum nonparole period. The government is concerned that sentences for convicted terrorists should reflect community concern about terrorism. The significant period that those sentenced are serving on parole—which in most cases is necessary to reintegrate prisoners back into the community—is not warranted in the case of terrorists and does not reflect community concern about the crimes. The very significant proportion of the overall head sentence devoted to release on parole—usually close to half—has a potential to undermine confidence in the criminal justice system, given that dealing with such cases is often costly and difficult. Proposed items 1C, 1D and 1E of government amendment (2) would include in the bill a minimum nonparole period regime applying to all persons convicted of and sentenced to imprisonment
for terrorism and other terrorism related offences. Currently the time required to be actually served in prison is at the discretion of the courts. Terrorism offences in the Criminal Code have a diverse range of maximum penalties. It would be difficult to specify a fixed nonparole period for each separate offence that could adequately take into account the court’s sentencing discretion and the range of maximum penalties that could be imposed. Consequently, the government amendments specify the application of the minimum nonparole period as three-quarters of the head sentence imposed for terrorism and other terrorism related offences. These amendments will mean that terrorists would be required to serve at least three-quarters of their sentence in prison before being eligible for parole. While this may appear to be an extraordinary measure, it has been used before in the context of people-smuggling, and terrorism raises extraordinary issues.

In increasing the prison time to be served by terrorists, the government recognises the need to ensure that courts still maintain sentencing discretion about whether someone should be imprisoned and, of course, about the total period of the sentence concerned. Furthermore, the minimum nonparole period for terrorism offences will not affect the nonparole period that a court may impose for other offences. The community has, as a result of the activities of terrorists, paid a huge cost in terms of emotional wellbeing from a loss of peace of mind as well as financially. These amendments are about making those convicted of terrorism offences spend more time in prison in recognition of that cost, and further ensuring the protection of the Australian community. Proposed clause 1B of government amendment (1) ensures that this minimum nonparole regime only operates for persons convicted of relevant offences prospectively.

Proposed item 1A of government amendment (2) and government amendment (3) refer to the definition of ‘terrorism offence’ used in the bill. The same definition applies to the investigatory framework, the bail provision and the minimum nonparole period regime. ‘Terrorism offence’ is defined to include all terrorism offences in part 5.3 of the Criminal Code as well as the terrorist bombing offences in division 72 of the code. Government amendment (3) would omit this definition from part IC of the Crimes Act, while item 1A of government amendment (2) would insert it in section 3 of the Crimes Act where it has general application.

Government amendments (4) to (6) deal with dead time, which has also been the subject of debate. I am addressing the amendments now in order to save time and also to indicate to the Senate the rationale behind these amendments which the government will be putting during the committee stage. These amendments flow from recommendations of the Senate Legal and Constitutional Legislation Committee. Government amendments (4) to (6) relate to the committee’s recommendation that the proposed dead time provision at section 23CA(8)(m) of the bill only be available if judicially authorised. Dead time is time when the investigation time clock stops to allow investigators or arrested persons to do prescribed events, such as talk with a legal representative, carry out a forensic period or give the person who is being questioned time to have rest or recuperation.

The government has developed a mechanism for judicial authorisation of extra dead time for terrorism offences, in recognition that this is the best way to balance the rights of an arrested person with providing the operational flexibility required given that terrorism investigations will often have an international dimension. This is a very important part of the reason for this amendment.
Of course it is something which does not relate to your normal investigation where a good deal of work has been undertaken by investigating officers and a good deal of information is to hand. In terrorism related offences you are often obtaining information from overseas, and it may be necessary to further obtain that information from overseas whilst you are questioning a suspect.

At present the bill provides for a special category of dead time in relation to making these overseas inquiries to obtain information relevant to that terrorism investigation. The mechanism which the government now proposes in response to the Senate committee’s recommendation is not limited just to making those overseas inquiries. It is general in nature but includes an indicative list of events that may arise in complex terrorism investigations giving rise to a legitimate need for extra dead time. A general mechanism is needed because it is impossible to accurately predict every event that may necessitate a reasonable halt in questioning so that critical information can be obtained for a proper pre-charge interview. The mechanism would allow investigating officials to make a case for extra dead time before a judicial officer. The arrested person, or his or her legal representative, would be given an opportunity to refute that case before the judicial officer concerned.

Should the Senate pass this updated dead time mechanism, I make the undertaking that the government will conduct an independent review of the new investigatory framework for terrorism investigations approximately three years after they become law. Such a review would provide an opportunity to exhaustively analyse the operation of the new provisions and remedy any evident operational or legal shortcomings. This undertaking, I would point out, is also giving effect to another recommendation made by the Senate Legal and Constitutional Legislation Committee. Of course, not all of those required an amendment to the bill, as I mentioned earlier.

In relation to remaining government amendments, (7) and (8), item 15 of the bill would ensure that a person involved with a terrorist organisation that is part of the armed forces of a government will be liable for an offence under the foreign incursions act by updating that act. The bill gives the government the power to prescribe organisations for the purposes of the Crimes (Foreign Incursions and Recruitment) Act. The Senate committee recommended that the bill also include criteria regulating the prescription of an organisation. The government agrees with that recommendation. Amendment (8) would update item 15 of the bill by stipulating that the Attorney-General can prescribe organisations under the act if satisfied on reasonable grounds that the organisation is directly or indirectly engaged in preparing, planning, assisting in or fostering particular activities, including terrorist acts or serious violations of human rights. Amendment (7) contains a minor tidy-up of the bill to ensure that the terrorist organisations already prescribed for the purposes of the terrorist offences in the Criminal Code are automatically caught by the offence provisions of the foreign incursions act.

The bill also includes measures to strengthen Australia’s laws for the confiscation of proceeds of crime, and that too has been the subject of comment by senators tonight. The purpose of such laws is to discourage and deter crime by diminishing the capacity of offenders to finance future criminal activities and to remedy the unjust enrichment of criminals who profit at society’s expense. The Senate committee recommended that the amendments to the literary proceeds provisions of the Proceeds of Crime Act 2002 contained in the bill be subject to independent review. The Proceeds of Crime Act will be subject to a comprehen-
sive and independent review under section 327 of that act during 2006. As with the amendments to the investigatory framework of the Crimes Act, I again make an undertaking to the Senate that the amendments to the Proceeds of Crimes Act contained in this bill will be considered as part of that review.

The recent barbaric terrorist attack in Madrid was a stark reminder to us all that we must be prepared to meet and defeat global terrorism head on. Ensuring our intelligence capabilities are appropriately directed towards terrorist organisations and their plans is arguably the most critical part of Australia’s counter-terrorism efforts. Our legal framework, however, must be constantly evolving in the new terrorist environment. The bill, when updated by government amendments, will respond proactively to these legal challenges. Importantly, it will give police the ability to do their job properly. As we have seen recently, the Australian Federal Police has been at the forefront of counter-terrorism efforts and the investigation of suspected terrorist offences. I know that there have been comparisons drawn between the provisions relating to ASIO and to the Australian Federal Police. I would point out that this is not a turf war, as Senator Nettle indicated; quite the contrary: the AFP complements the work done by ASIO.

ASIO is about gathering intelligence and, as the Commissioner of the Australian Federal Police, Mick Keelty, pointed out whilst giving evidence before the Senate Legal and Constitutional Legislation Committee, the regimes between ASIO and the AFP are quite different and they have to be so. ASIO collects information for intelligence and in doing so does not have the same requirements that we make of police. For instance, if police are questioning people, people have a right to remain silent. There are all sorts of restrictions on the way that investigation and interviewing can be carried out because when the police carry out an investigation they are gathering evidence for a potential trial. That is why the regime dealing with the Australian Federal Police and its interviews has to be different to that of ASIO. The intelligence generally gathered by ASIO during an interview is generally not admissible, whereas when an Australian Federal Police officer interviews someone they are about obtaining evidence which can be admitted in a court of law for the purposes of securing a conviction. That is why the two regimes are quite different. It is not a question of the AFP having some sort of conflict with ASIO. It is just that they are very different organisations existing for different purposes, albeit in the service of the ultimate goal of the protection of Australia’s interests. I commend the bill to the Senate and I commend the amendments which the government will be moving in the committee stage.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.41 p.m.)—by leave—I table a supplementary memorandum relating to the government amendments to be moved to the bill. I move government amendments (1) and (2) on sheet PD201:

(1) Clause 4, page 2 (after line 6), before subclause (1), insert:

(1A) The amendment made by item 1B of Schedule 1 applies:

(a) to a person convicted of an offence on or after the commencement of this Act (whether or not the person was charged with the offence before the commencement of this Act); and

(b) to a person charged with an offence on or after the commencement of this Act.
The amendments made by items 1C, 1D and 1E of Schedule 1 apply in relation to minimum non-parole offences of which persons are convicted on or after the commencement of this Act, whether the offences were or are committed before, on or after that commencement.

Schedule 1, page 3 (after line 4), before item 1, insert:

1A Subsection 3(1)
Insert:

terrorism offence means:
(a) an offence against Division 72 of the Criminal Code; or
(b) an offence against Part 5.3 of the Criminal Code.

1B After section 15
Insert:

15AA Bail not to be granted in certain cases
(1) Despite any other law of the Commonwealth, a bail authority must not grant bail to a person (the defendant) charged with, or convicted of, an offence covered by subsection (2) unless the bail authority is satisfied that exceptional circumstances exist to justify bail.

(2) This subsection covers:
(a) a terrorism offence; and
(b) an offence against a law of the Commonwealth, if:
(i) a physical element of the offence is that the defendant engaged in conduct that caused the death of a person; and
(ii) the fault element for that physical element is that the defendant intentionally engaged in that conduct (whether or not the defendant intended to cause the death, or knew or was reckless as to whether the conduct would result in the death); and
(c) an offence against a provision of Division 80 or Division 91 of the Criminal Code, or against section 24AA of this Act, if:
(i) the death of a person is alleged to have been caused by conduct that is a physical element of the offence; or
(ii) conduct that is a physical element of the offence carried a substantial risk of causing the death of a person; and
(d) an ancillary offence against a provision of Division 80 or Division 91 of the Criminal Code, or against section 24AA of this Act, if, had the defendant engaged in conduct that is a physical element of the primary offence to which the ancillary offence relates, there would have been a substantial risk that the conduct would have caused the death of a person.

(3) To avoid doubt, the express reference in paragraph (2)(d) to an ancillary offence does not imply that references in paragraphs (2)(a), (b) or (c) to an offence do not include references to ancillary offences.

(4) To avoid doubt, except as provided by subsection (1), this section does not affect the operation of a law of a State or a Territory.

Note: Subsection (1) indirectly affects laws of the States and Territories because it affects section 68 of the Judiciary Act 1903.

(5) In this section:
ancillary offence has the meaning given in the Criminal Code.
bail authority means a court or person authorised to grant bail under a law of the Commonwealth, a State or a Territory.
primary offence has the meaning given in the Criminal Code.
1C After section 19AF

Insert:

19AG Non-parole periods for sentences for certain offences

(1) This section applies if a person is convicted of one of the following offences (each of which is a minimum non-parole offence) and a court imposes a sentence for the offence:

(a) an offence against section 24AA;
(b) a terrorism offence;
(c) an offence against Division 80 or 91 of the Criminal Code.

Note: A sentence for a minimum non-parole offence is a federal sentence, because such an offence is a federal offence.

(2) The court must fix a single non-parole period of at least 3/4 of:

(a) the sentence for the minimum non-parole offence; or
(b) if 2 or more sentences have been imposed on the person for minimum non-parole offences—the aggregate of those sentences.

The non-parole period is in respect of all federal sentences the person is to serve or complete.

(3) For the purposes of subsection (2):

(a) a sentence of imprisonment for life for a minimum non-parole offence is to be a sentence of imprisonment for 30 years for the offence; and

(b) it does not matter:

(i) whether or not the sentences mentioned in that subsection were imposed at the same sitting; or

(ii) whether or not the convictions giving rise to those sentences were at the same sitting; or

(iii) whether or not all the federal sentences mentioned in that subsection are for minimum non-parole offences.

(4) If the person was subject to a recognizance release order, the non-parole period supersedes the order.

(5) Sections 19AB, 19AC, 19AD, 19AE and 19AR have effect subject to this section.

Note: The effects of this include preventing a court from:

(a) making a recognizance release order under paragraph 19AB(1)(e) or (2)(e), 19AE(2)(e) or 19AR(2)(e); or

(b) confirming (under paragraph 19AD(2)(d)) a pre-existing non-parole period; or

(c) confirming (under paragraph 19AE(2)(d)) a recognizance release order; or

(d) declining (under subsection 19AB(3) or 19AC(1) or (2) or paragraph 19AD(2)(f)) to fix a non-parole period.

1D At the end of section 20

Add:

(6) Paragraph (1)(b) does not apply in relation to a minimum non-parole offence mentioned in section 19AG or offences that include one or more such minimum non-parole offences. This subsection has effect despite subsection (1) and sections 19AB, 19AC, 19AE and 19AR (which permit or require a court to make a recognizance release order in certain circumstances).

Note: If the court sentences the person to imprisonment for a minimum non-parole offence, it must fix a non-parole period under section 19AG.

1E At the end of section 20AB

Add:
(6) Subsection (1) does not permit a court (including a federal court) to pass a sentence, or make an order, that involves detention or imprisonment, in respect of the conviction of a person before the court of a minimum non-parole offence mentioned in section 19AG.

Note: If the court sentences the person to imprisonment for the minimum non-parole offence, it must fix a non-parole period under section 19AG.

I touched on these amendments in the speech in reply that I gave during the second reading debate. These amendments relate to bail and a nonparole period. I have outlined the policy behind the question of bail—that is, the presumption against bail and that it should only be granted in exceptional circumstances—and the question of the nonparole period. These two amendments fit in with government amendment (3), which I propose to move shortly, but because the motion required for the respective amendments is different we are actually dealing with them separately. So we are dealing with amendments (1) and (2) now and I will move amendment (3) shortly.

Senator LUDWIG (Queensland) (8.43 p.m.)—I recognise that amendments (1), (2) and (3) do in fact relate to the same issue. Unfortunately, as I understand the way the amendments have to work in this place, you actually have to reverse it, but there has been leave given to deal with (1) and (2), and amendment (3) is a technical amendment so I will reserve my comments on that and only foreshadow that I will say more during the debate when (3) is moved. The amendments that the government has now moved together concern principally two issues: bail and the nonparole period. The amendments relating to bail will provide that a person charged with a specified Commonwealth offence must not be granted bail unless exceptional circumstances exist to justify bail. The offences are, in summary, a terrorism offence, a Commonwealth offence involving international conduct causing a death or an offence of treason, espionage or treachery involving conduct that carried a substantial risk of causing death and actually caused death or an ancillary offence thereto. The Attorney-General first referred to these amendments on 3 June following a decision by a New South Wales magistrate on the previous day to grant bail to Bilal Khazal, who had been charged with collecting or making documents likely to facilitate terrorist attacks. At the time there was widespread concern that this decision did not reflect community expectations when dealing with charges as serious as facilitating terrorist acts. As this is still a matter before the courts, it would be inappropriate for me to make any further particular comment.

On 3 June the New South Wales parliament passed the Bail Amendment (Terrorism) Act 2004, which provides that a person accused of a terrorist offence is not to be granted bail unless they satisfy the court that bail should not be refused. In effect, that added terrorism to the list of offences for which a presumption against bail already operates in the New South Wales Bail Act, which previously consisted of serious drug offences, murder and repeat offences of serious personal violence. A similar presumption operates under the Victorian Bail Act in the case of treason, murder or serious drug offences. The amendments would also create a minimum nonparole period for Commonwealth offences of terrorism, treason, espionage and treachery of three-quarters of the head sentence imposed by the court or, if multiple sentences have been imposed, the aggregate of those sentences as defined in section 16 of the Crimes Act. The amendments do not limit the court’s discretion...
when fixing the head sentence applying normal sentencing principles.

On 1 June the Western Australian District Court sentenced Jack Roche to a period of nine years imprisonment with a nonparole period of 4½ years for conspiring with al-Qaeda to bomb the Israeli embassy. The sentence was backdated to 18 November 2002, meaning that Mr Roche will be eligible for parole in May 2007, less than three years from now. Again, there has been considerable concern that this period does not meet community expectations, given the abhorrent deeds this individual was planning, although it must not be forgotten that the court said it would have imposed a longer sentence but for a letter from the prosecution referring to the accused’s cooperation with authorities. Again, as this matter is still before the courts, it would be inappropriate for me to go further than I have.

As I said earlier, we recognise that these are extraordinary measures. But having looked at them closely, and the grave offences that they concern, we believe they are in Australia’s national interest and are necessary to align the laws more closely with community expectations. However, as with all such extraordinary measures, it will be important to keep their operation under close scrutiny. We are committed to ensuring that they too are subject to an independent review after three years.

Senator NETTLE (New South Wales) (8.48 p.m.)—I have a number of questions to ask both the opposition and the government on this. I will start with the opposition, given they have just made their contribution. I recognise and accept that, in referring to the Khazal case and the Roche case, the opposition do not want to go into the details of those cases. But, if the opposition are making a decision to support government amendments to turn around the presumption in relation to bail on the basis of these two cases, it is not good enough to say that because they are before the court we cannot talk about them. I do not want to hear what the opposition have to say on those particular cases but, if they are the rationale on which the opposition are deciding that we should not be granting bail to people who are charged with terrorism offences, I think we need to hear a little bit more than, ‘We’re basing it on those cases, but we can’t talk about them because they’re in the courts.’ I would be interested to hear some more argument from the opposition as to why they think it is acceptable that people who are charged with terrorism offences should automatically not be granted bail.

I have already given, in my second reading contribution to this debate, the example of ul-Haque, where the prosecution said he poses no threat to the community. Senator Ludwig has given an example in relation to the second case he cited, Jack Roche, in which he said the judge made a decision on the basis of the way in which he had cooperated with the investigations. I would be interested to hear from Senator Ludwig on behalf of the opposition, the Labor Party, why they believe it is acceptable that people charged with terrorism offences should automatically not be granted bail. Why should the presumption be turned around in relation to these individuals? I do not want to hear the specifics of the cases, but I am certainly interested in hearing a rationale, a reason. This is the public debate we are having on this. The government proposed this last week. Sure, the Carr government may have jumped up first in relation to Khazal in response to something they saw in the Daily Telegraph and changed the Bail Act in New South Wales, but I do not think that is a rationale for why we should follow on and do such a thing here. I would be very interested
to hear from the opposition what the rationale is.

Senator LUDWIG (Queensland) (8.51 p.m.)—There are a number of reasons why it would be inappropriate in this place to go into the two cases I mentioned. They are not the details that I wanted to go to; they are merely the events that formed Labor’s view on whether or not we will support these particular amendments. It is not only in the sense of those events. Upon examining the legislation and having looked more generally at the New South Wales and Victorian provisions, we have come to agree that they are serious issues. We can find a way to look at the amendments, on the basis of both the events and more generally the provisions of the New South Wales and Victorian legislation, and come to our own conclusion that they are serious offences and that this is one appropriate way to deal with them.

Senator NETTLE (New South Wales) (8.52 p.m.)—I do not contest what Senator Ludwig is saying in relation to these being serious offences. What we need to be careful of—and one of the reasons why the Greens are opposing this—is putting these measures in place and buying into what I would describe as the ‘law and order auction’ that happens at state government level in relation to what New South Wales and Victoria have done. It is not about saying these are not serious offences. Where an individual is charged with a terrorism offence and the capacity to access bail is automatically turned around and the onus is reversed, it is not about whether that offence is serious; it is about whether there are innocent individuals—and we are not talking cases here; we are talking generics—who may be caught up and charged with terrorism offences who are not automatically granted the presumption to access bail. That is our concern. It is not that these are not serious offences. They are obviously serious offences, and the penalties that are already in place for these types of offences show that. But where an innocent individual is charged with a terrorism offence, for whatever reason, I do not understand why the opposition is supporting turning around the presumption that they can have access to bail. That is the concern with bringing in these proposals. This is the only opportunity for public debate as to why this is appropriate, and I think we need more explanation from the opposition and from the government about why this is the path that we should be going down.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.54 p.m.)—I covered the rationale for the government amendment in relation to bail in the second reading speech in reply. I would just say again that terrorism offences are very much at the serious end of the scale of criminal activity. There already exists in a number of jurisdictions the requirement that bail be granted only in exceptional circumstances for serious offences such as murder. What we are indicating to the courts is that a similar regard should be had to terrorism offences as being in that category of seriousness such that bail should be granted only in exceptional circumstances.

I just want to make it clear to the Senate that it is dangerous—in fact, unwise as well—to comment on cases which are before the courts. As I understand it, there is a case proceeding in relation to an issue of bail and one which is an appeal in relation to a matter which was heard in Perth. I will certainly not be commenting on any feature or otherwise of those cases, as they are before the courts. But in a general sense I can say that the government have moved this amendment so that we can have a national regime in relation to bail for terrorist offences and not the patchwork, as I mentioned earlier, that exists in relation to the various state and territory jurisdictions. We do say very clearly that ter-
rorism offences are at the serious end of the scale of criminal activity. They are in a category which equates to offences such as murder, and there are already in place provisions for bail which require there to be exceptional circumstances before someone can be given bail where they have been charged with those sorts of offences, and we think that it is consistent.

Senator NETTLE (New South Wales) (8.57 p.m.)—I just want to comment in relation to the comment the minister made about cases before the court. The only case that I have mentioned in here is the bail hearing of ul-Haque, which is not before the courts. I have not mentioned any other cases. But ul-Haque’s case is before the courts. His bail hearing is not before the courts; it has concluded.

I have two questions for the minister. I suppose the first is an overarching question. Why do the government believe that they know better than the courts and the judiciary in making determinations about what danger individuals pose to the community and what sorts of sentencing and nonparole periods they should face? Why do the government believe that they know better than the judiciary?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.58 p.m.)—In relation to the matter that Senator Nettle has raised, I do not believe it is in the courts—I think that is correct—but that does not take away the fact that there is the potential for it to be so. With regard to the question about whether the government know better than the judiciary, we are the elected representatives of the Australian community and we are elected to enact laws which reflect what the community expects. I believe the community does expect that in cases of serious crime, including terrorism, there should be put in place provisions which reflect the seriousness of those offences. It is not a decision we make lightly—the fact that exceptional circumstances should be made out in the case of bail or, indeed, in relation to the nonparole period—but it is really up to us, the legislature, to determine this. The judiciary is governed by the laws that we enact, and we have to give that judiciary direction.

We are giving the judiciary appropriate direction with these amendments. We are saying very clearly to the judiciary, ‘This is how we want you to apply the law.’ There was a famous American judge who was on his way to court and someone said, ‘Judge, you are on your way to do justice, are you?’ and he said: ‘Anything but. I am merely going to apply the law’—sometimes a very different situation. Nonetheless, the job of the judiciary is to apply the law and we as the legislature have to enact that law. We believe this is appropriate and it is our responsibility to do so if we think it is appropriate. We think it is nothing less than what the Australian community would expect of any responsible government.

Senator NETTLE (New South Wales) (9.00 p.m.)—I thank the minister for answering my question. The minister says that it is what the community expects. I live in Sydney and I know what the Daily Telegraph expects in these sorts of cases. I know the response of the New South Wales government in changing the Bail Act as a result of what the Daily Telegraph expects. I am now seeing the federal government responding to what the Daily Telegraph expects in New South Wales.

I have another question, Minister, which relates to the International Covenant on Civil and Political Rights and to the Convention on the Rights of the Child. Has the government sought advice about whether this legis-
lation contravenes either of those two international conventions?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.01 p.m.)—I will take it on notice and ascertain the question of advice in relation to those particular conventions. Perhaps Senator Nettle has some other queries that she can put in the meantime.

Senator GREIG (Western Australia) (9.01 p.m.)—I put on record the Democrats’ consideration of these amendments. Government amendment (1) provides that the presumption against bail applies to a person convicted of an offence after the commencement of the act whether or not the person was charged after the commencement of the act, and also applies to a person charged with an offence after the commencement of the act. It also provides that the new minimum nonparole periods apply to persons convicted of offences on or after the commencement of the act whether those offences were committed before, on or after the commencement of the act. We will oppose that amendment.

Equally, government amendment (2) introduces, firstly, a presumption against bail other than in exceptional circumstances for terrorism offences and Commonwealth offences involving death or a substantial risk of death. Secondly, it provides for minimum nonparole periods for terrorism offences and other Commonwealth offences involving death or a substantial risk of death. For those particular offences it dictates that the minimum nonparole period must be three-quarters of the total sentence for the offence or, if there are two or more offences, the aggregate of the sentences for those offences.

The presumption against bail is a long-held principle and closely related to the presumption of innocence, as I argued in my second reading contribution. It is founded on the notion that the deprivation of liberty should as far as possible be tied to conviction for a criminal offence. Individuals charged with a crime ought to be considered innocent until proven guilty, and the presumption in favour of bail reflects that. If a suspected terrorist presented a risk to the community, that would clearly be taken into account by the bail authority, as I have argued, which would be highly unlikely to support bail under those circumstances. We Democrats see no particular need to reverse that presumption in favour of bail.

Indeed, by introducing minimum nonparole periods the government is attempting to fetter the discretion of the courts during the sentencing process. There is a wealth of legal authority to assist judges in fixing suitable sentences. The sentencing of individuals should take into account all relevant factors on a case-by-case basis. By setting, as it seeks to do, a minimum nonparole period the government is precluding the court from taking into account all relevant considerations. For those reasons we cannot and will not support amendments (1) and (2) proposed by the government.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.04 p.m.)—In relation to Senator Nettle’s question I can advise the chamber that the government sought advice from the Office of General Counsel in relation to the question of compliance with international conventions and the ones that Senator Nettle has mentioned. I am advised that the advice received by the government is that these provisions do comply with our obligations in relation to those conventions. As is the norm, we do not table or provide advice that we have received. Suffice to say that we have obtained that advice.

Senator NETTLE (New South Wales) (9.05 p.m.)—I thank the minister for his an-
swer. I suppose the answer is, ‘We say it’s all right; therefore you must believe us.’ I think the government should table the advice so that we can determine the basis on which the government believes it is not contravening these conventions. The minister has said that the protocol is that advice is not tabled. I have been here only two years but I have been here long enough to see the number of times in which the advice has not been tabled. The argument still needs to be made as to why and how the government believes these international conventions have not been contravened by this legislation. Perhaps I could ask the minister that question, having recognised and seen the number of times that advice has not been tabled: on what basis is the government’s advice that the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child have not been contravened?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.06 p.m.)—That seems to me to be a backdoor attempt—that is, to ask instead of tabling the advice to detail it. The advice is that these provisions do comply with our international obligations. I am not going to go further than that. The government stands by the fact that these provisions do comply with our international obligations. We believe that they do because of the advice we have received from the Office of General Counsel. That is as far as I can take it.

I should have done this earlier: I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 16 June this year.

Senator NETTLE (New South Wales) (9.07 p.m.)—In response to his last answer, I thank the minister for nothing. With regard to the government amendments we are debating, it is worth remembering that the purpose of bail is to ensure that an accused person appears in court for trial after an assessment of risk of carrying out any more of the alleged acts is made. This can only be assessed on an individual basis, yet these amendments before the chamber seek to change the whole purpose of bail—for the capacity for these risks to be assessed on an individual basis. It is just a blanket ruling for any terrorism offence. It does not make any judgment about whether or not it is appropriate to the offence at the time; it is a blanket ruling for any terrorism offence. Nobody who is charged with a terrorism offence can be assessed as an individual. Their individual risk, their danger to the community, their likelihood of reoffending or their likelihood of appearing or not appearing for their case cannot be assessed.

The government think they know better than the judiciary by saying, ‘In all these areas, we, the government, arrogantly have decided we know better than the judiciary.’ No-one charged with a terrorism offence can show any of these individual traits. No-one can have their case looked at individually. No-one can have their risk, their capacity to turn up or their likelihood to re-offend assessed. None of those things can be assessed, as they have been in cases that have now been concluded, in the bail hearing before a court. That is the decision the government are making and that is the decision the opposition are making when standing up and saying, ‘Me too.’ It is not acceptable to the Greens and we oppose it.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.10 p.m.)—The government opposes schedule 1 in the following terms:
(3) Schedule 1, item 2, page 3 (lines 9 to 13), to be opposed.
This really covers the same ground that was dealt with in the earlier debate. I can take it no further.

Senator Nettle (New South Wales) (9.10 p.m.)—The minister is right—it covers the same area. This is a further vote about whether or not people should be treated as individuals and about whether or not the government knows better than the judiciary. The Greens disagree and we will be opposing the proposal.

Senator Greig (Western Australia) (9.11 p.m.)—The proposal we have before us seeks to remove two definitions, which, indeed, have now been replaced with the successful passage of amendment (2), which the Democrats opposed. Consequently, we would oppose this particular proposal as well.

The Temporary Chairman (Senator Lightfoot)—The question is that item 2 in schedule 1 stand as printed.
Question negatived.

Senator Greig (Western Australia) (9.11 p.m.)—by leave—I move Democrat amendments (1) and (2) on sheet 4265:

(1) Clause 4, page 2 (after line 18), at the end of the clause, add:

(3) The amendments made by this Act apply only insofar as they do not contravene the International Convention on the Rights of the Child.

(2) Schedule 1, page 3 (after line 13), after item 2, insert:

2A After section 23B
Add:

23CA Compliance with International Convention on the Rights of the Child
This Division applies only insofar as it does not contravene the International Convention on the Rights of the Child.

At their core, the Democrat amendments seek to ensure that, if the legislation is to pass and become an act, nothing in this legislation can breach the International Convention on the Rights of the Child and that that particular international benchmark is maintained. We know, for example, that with the passage of this legislation, young people—as young as 14—could be detained for up to several days. During the comprehensive inquiry into this legislation we had considerable evidence both in writing and in person from a number of organisations, including the Public Interest Advocacy Centre and Amnesty International, that expressed their particular concerns about how the legislation may impact on Indigenous and young people. I refer to page 19 of the Senate Legal and Constitutional Legislation Committee report into the provisions of this bill. Under the heading ‘Detention of minors and Aboriginal and Torres Strait Islander people’, section 3.33 stated:

The Public Interest Advocacy Centre recommended that, in line with the recommendations in the Royal Inquiry into Aboriginal Deaths in Custody, the current maximum extended investigation period of 8 hours should be maintained for people under 18 years of age and Aboriginal and Torres Strait Islander people.

The report goes on to reflect the views of Amnesty International at section 3.34, which states:

Amnesty International Australia also expressed concern that the Bill would extend the possible period of detention for children, and argued that this ran the risk of breaching Article 37 of the Convention on the Rights of the Child, which provides that no child should be deprived of his or her liberty arbitrarily.

We have heard some comment from the government arguing that there will be no breach—that safeguards are in place and there will be no contravention of the Convention of the Rights of the Child by the pas-
sage of this legislation. But we Democrats would argue that that assurance is not good enough. More importantly, if that is to be the case, why not put it beyond doubt, enshrine it in the legislation and affix the notion to the bill before us? That is what we are seeking to do. It is critical, as the Democrats have argued during the passage of a whole suite of antiterrorism bills, that we maintain as best we can those minimum benchmarks of civil liberties and human rights. This is yet another opportunity to do that.

I note with interest that just a few days ago the member for Perth, Mr Stephen Smith, was giving a speech in relation to the appropriation bills and he spoke to his interest in immigration and more particularly in response to the Human Rights and Equal Opportunity Commission’s report titled recently entitled A last resort? The report of the national inquiry into children in immigration detention. I realise we are not this evening talking about children in immigration detention, but I would argue that the principle is the same. Mr Smith, speaking on Tuesday, 1 June this year, said:

In budget week we saw the long-awaited release of the Human Rights and Equal Opportunity Commission’s report entitled A last resort? The report of the national inquiry into children in immigration detention. I realise we are not this evening talking about children in immigration detention, but I would argue that the principle is the same. Mr Smith, speaking on Tuesday, 1 June this year, said:

He went on to argue, in part, as to why Labor was so strongly opposed to children being in immigration detention centres. As I say, I would argue that the principle applies here to. Let us ensure that the interests of children do come first in the passage of this legislation, that it is given some considerable express concern and priority and that the convention to which Australia is a signatory is not just reflected through the promises and assurances of the minister and the government but is actually a significant and concrete part of the legislation to put beyond any doubt that it may or may not apply.

Senator NETTLE (New South Wales) (9.16 p.m.)—The Australian Greens will be supporting these Democrat amendments. We have a real and very genuine concern about the contravention of the International Convention on the Rights of the Child, as we also have a real and genuine concern about the contravention of the International Covenant on Civil and Political Rights. I will take this opportunity to ask the government a number of questions on this, given that we got no answers before in relation to the advice that they had received. I might do that by reading out two particular paragraphs from the International Covenant on Civil and Political Rights and ask the minister how this legislation and the two amendments that just got up with the support of the major parties apply in relation to bail. Article 9 paragraph 3 of the covenant reads:

It shall not be the general rule that persons awaiting trial shall be detained in custody ...

Can the minister explain how the amendment just supported by the government and the opposition to remove the presumption that an individual will be granted bail does not contravene that paragraph of the international covenant?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.18 p.m.)—There is no general rule in this bill that says a person shall be detained in cus-
toady whilst awaiting trial. That being the case, there is no infringement of article 9 paragraph 3 as mentioned by Senator Nettle. What we say is not that a person shall be denied bail; we say in fact that there is an ability to grant bail, albeit that the case for bail has to show exceptional circumstances. If the proposal was to say ‘there shall be no bail’ then you would have a general rule that the person concerned would be kept in custody awaiting trial. Certainly I think there is a misunderstanding there by Senator Nettle in relation to how this provision of article 9 relates to the bill we have before us tonight. There is no general rule in this bill at all that denies a person bail. It simply imposes criteria which the person has to meet. I would argue, in any event, that in the terminology of ‘general rule’ where it says, ‘It shall not be the general rule that persons awaiting trial shall be detained in custody,’ you could well expect that it could entertain an exception to that general rule. But that does not arise in this case. There is no general rule that a person will be denied liberty pending trial in this bill.

Senator NETTLE (New South Wales) (9.20 p.m.)—I note the minister’s acknowledgment and I agree that the way the covenant is written—‘It shall not be the general rule that persons awaiting trial shall be detained in custody’—does allow for there to be exceptional circumstances. That is the case in this bill. This bill has the general rule that a person charged with terrorism offences shall remain in custody. If there are exceptional circumstances, the situation may be different, but the general rule is that they will be detained in custody. I do not think there has been a misunderstanding on my part at all. The general rule is that you are detained in custody. There may be exceptional circumstances and that is what the government is providing for—for people not being detained in custody. But the general rule is for them to be detained in custody.

Senator LUDWIG (Queensland) (9.21 p.m.)—The Senate Legal and Constitutional Legislation Committee in respect of this matter was mindful of the impact on children. The transcript of the proceedings shows that it was a matter that was considered. It was reflected in our recommendation for judicial oversight of the suspension of questioning. It think it is also worth mentioning that the convention was a matter that was taken into account by Labor when we first developed part IC of the Crimes Act, which was reflected in the way the system works, where there is a four-hour provision for questioning to take place. This is in respect of a suspect who has been arrested and, of course, there are certain safeguards. But, if you recall, part IC then also goes on to provide a different period for others that might be covered by the convention.

Also, in this instance, it is not that initial period that is gavalled with. What we are now talking about is the extension. The extension will allow judicial oversight, so the court will then be in a much better position, in respect of the person in this instance who is suspected of committing a serious offence such as terrorism, to be able to determine, having heard from the parties and looked at the evidence or the people concerned, as to what circumstances should surround the extension for questioning. Labor says that the way this works provides, perhaps, a more upfront way of allowing the magistrate with judicial oversight to carry out his task in a way that takes all of those considerations into account. Labor acknowledges the intent of the amendments but is not able, for the reasons outlined, to be in a position to support them.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.24
For the record, the government opposes Democrat amendments (1) and (2) and in relation to the protection afforded to children would point to the fact that the investigatory framework already provides for protection of children. Part IC of the Crimes Act has been alluded to by Senator Ludwig and that provides a raft of provisions which go to protecting the interests of a juvenile. Certainly, the provisions of section 23L of the Crimes Act provide for the questioning of a child to be conducted in the presence of an interview friend. An interview friend could be a parent, guardian or legal practitioner. The extra dead time mechanism, which we will move in amendments (4) to (6), also requires a judicial officer to be informed as to whether the suspect is a child and that has to be advised to the judicial officer before that judicial officer makes a decision as to whether to grant the extra dead time.

Of course, as Senator Ludwig mentioned in relation to children, we have a lower period of interview: it being two hours rather than the four that applies to an adult. A judicial officer has to provide the approval for the extension of time and, as I have said, part of that application must entail the advice that the person they are dealing with is a juvenile. But, when you take all the provisions of part IC of the Crimes Act which apply and these amendments, we believe that there is appropriate protection of a juvenile in the circumstances.

Senator NETTLE (New South Wales) (9.26 p.m.)—For the record, the government opposes Democrat amendments (1) and (2) and in relation to the protection afforded to children would point to the fact that the investigatory framework already provides for protection of children. Part IC of the Crimes Act has been alluded to by Senator Ludwig and that provides a raft of provisions which go to protecting the interests of a juvenile. Certainly, the provisions of section 23L of the Crimes Act provide for the questioning of a child to be conducted in the presence of an interview friend. An interview friend could be a parent, guardian or legal practitioner. The extra dead time mechanism, which we will move in amendments (4) to (6), also requires a judicial officer to be informed as to whether the suspect is a child and that has to be advised to the judicial officer before that judicial officer makes a decision as to whether to grant the extra dead time.

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Senator NETTLE (New South Wales) (9.26 p.m.)—I have one more question for the minister in relation to the International Covenant on Civil and Political Rights. Paragraph 5 of article 9 of that covenant states:

Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Can the minister point out how that applies in relation to this bill?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.26 p.m.)—As I understand it, the usual remedies would apply in relation to unlawful detention or arrest in this circumstance. I think that is what Senator Nettle is driving at. Of course, police have to carry out appropriate standards in the investigation of a matter, the apprehension of a person, the questioning of that person and, certainly, in relation to the arrest and charging of that person. All those normal requirements apply and, of course, if an arrest is executed unlawfully, the usual remedies would be open to the person concerned. That would follow for unlawful detention.

Senator NETTLE (New South Wales) (9.27 p.m.)—The minister started that response by saying that he thinks this is the case. It sounded as though he got more confident as he went on in terms of this being the case. I wanted to allow the minister to check: is this the case?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.27 p.m.)—Yes, it is the case.

Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.28 p.m.)—by leave—I move government amendments (4) to (6) on sheet PD201:

(4) Schedule 1, item 5, page 6 (line 8), after “section” insert “23CB.”.

(5) Schedule 1, item 5, page 6 (lines 21 to 26), omit paragraph (m), substitute:

(m) any reasonable time that:

(i) is a time during which the questioning of the person is reasonably suspended or delayed; and

(ii) is within a period specified under section 23CB.
23CB Specifying time during which suspension or delay of questioning may be disregarded

(1) This section applies if the person mentioned in paragraph 23CA(8)(m) is detained under subsection 23CA(2) for the purpose of investigating whether the person committed a terrorism offence.

Note: The person may be detained under subsection 23CA(2) for the purpose of investigating whether the person committed a terrorism offence, whether the person was arrested for that terrorism offence or a different terrorism offence.

Application for specification of period

(2) At or before the end of the investigation period, an investigating official may apply for a period to be specified for the purpose of subparagraph 23CA(8)(m)(ii).

(3) The application must be made to:

(a) a magistrate; or
(b) if it cannot be made at a time when a magistrate is available—a justice of the peace employed in a court of a State or Territory or a bail justice; or
(c) if it cannot be made when any of the foregoing is available—any justice of the peace.

(4) The application may be made:

(a) in person before the magistrate, justice of the peace or bail justice; or
(b) in writing; or
(c) by telephone, telex, fax or other electronic means.

However, before making the application by means described in paragraph (c), the investigating official must inform the person that the person, or his or her legal representative, may make representations to the magistrate, justice of the peace or bail justice about the application.

(5) The application must include statements of all of the following:

(a) whether it appears to the investigating official that the person is under 18;
(b) whether it appears to the investigating official that the person is an Aboriginal person or a Torres Strait Islander;
(c) the reasons why the investigating official believes the period should be specified, which may, for example, be or include one or more of the following:

(i) the need to collate and analyse information relevant to the investigation from sources other than the questioning of the person (including, for example, information obtained from a place outside Australia);
(ii) the need to allow authorities in or outside Australia (other than authorities in an organisation of which the investigating official is part) time to collect information relevant to the investigation on the request of the investigating official;
(iii) the fact that the investigating official has requested the collection of information relevant to the investigation from a place outside Australia that is in a time zone different from the investigating official’s time zone;
(iv) the fact that translation is necessary to allow the investigating official to seek information from a place outside Australia and/or be provided with such information in a language that the official can readily understand;
(d) the period that the investigating official believes should be specified.

(6) The person, or his or her legal representative, may make representations about the application.

Decision about specifying period

(7) The magistrate, justice of the peace or bail justice may, by signed instrument, specify a period starting at the time the instrument is signed, if satisfied that:

(a) it is appropriate to do so, having regard to:
   (i) the application; and
   (ii) the representations (if any) made by the person, or his or her legal representative, about the application; and
   (iii) any other relevant matters; and
(b) the offence is a terrorism offence; and
(c) detention of the person is necessary to preserve or obtain evidence or to complete the investigation into the offence or into another terrorism offence; and
(d) the investigation into the offence is being conducted properly and without delay; and
(e) the person, or his or her legal representative, has been given the opportunity to make representations about the application.

Instrument specifying period

(8) The instrument must:

(a) specify the period as a number (which may be less than one) of hours; and
(b) set out the day and time when it was signed; and
(c) set out the reasons for specifying the period.

(9) The magistrate, justice of the peace or bail justice must:

   (a) give the investigating official a copy of the instrument as soon as practicable after signing it; and
   (b) if the instrument was made as a result of an application made by means described in paragraph (4)(c)—inform the investigating official of the matters included in the instrument.

Evidentiary provisions if application was made by telephone, fax etc.

(10) As soon as practicable after being informed of those matters, the investigating official must:

   (a) complete a form of the instrument and write on it the name of the magistrate, justice of the peace or bail justice and the particulars given by him or her; and
   (b) forward it to the magistrate, justice of the peace or bail justice.

(11) If the form of the instrument completed by the investigating official does not, in all material respects, accord with the terms of the instrument signed by the magistrate, justice of the peace or bail justice, the specification of the period is taken to have had no effect.

(12) In any proceedings, if the instrument signed by the magistrate, justice of the peace or bail justice is not produced in evidence, the burden lies on the prosecution to prove that the period was specified.

Government amendments (4) to (6) relate to the question of dead time. I again outlined the provisions in relation to that in my speech in reply in the second reading debate. These amendments are the result of recommendations made by the Senate Legal and Constitutional Legislation Committee and that committee recommended that the proposed dead time provision at section 23CA(8)(m) of the bill only be available if judicially authorised.
It is interesting to note that in the amendment there is a provision for the application to be made to the judiciary official. In that application it must be stated why the investigating official believes the period should be specified. In doing that, the investigating official must outline one or more of the following four factors. First is the need to collate and analyse information relevant to the investigation from sources other than the questioning of the person—including, for example, information obtained from a place outside Australia. That refers to the circumstance where they have to make investigations overseas or obtain information from overseas. Second is the need to allow authorities in or outside Australia, other than authorities in an organisation of which the investigating official is part, time to collect information relevant to the investigation on the request of the investigating official. This refers to the situation, for example, where you have an Australian Federal Police officer who is the investigating official needing to get information from a state policeman and asking that state policeman to make certain inquiries for him or her.

Third is the fact that the investigating official has requested the collection of information relevant to the investigation from a place outside Australia that is in a time zone different from the investigating official’s time zone. This again relates to that overseas inquiry but makes a further provision for the time zone factor. It may be the middle of the night when you want to make inquiries of officials in the United States or the United Kingdom. In that case, you would have to wait until their morning before you could raise anyone to get that information. So that is another aspect which has to be outlined in the application. The fourth criterion is the fact that translation is necessary to allow the investigating official to seek information from a place outside Australia and/or be provided with such information in a language that the official can readily understand. Again, these inquiries can involve different languages. Translation can take some time and has to be provided in a form that the investigating official would understand. This is part and parcel of the reason for the extra dead time. The approval for that extra dead time has to be granted by a judicial official. The amendments are the result of a recommendation from the Senate Legal and Constitutional Legislation Committee. It is a sound recommendation from that committee. I commend these amendments to the Senate.

Senator LUDWIG (Queensland) (9.32 p.m.)—Labor support government amendments (4), (5) and (6). These amendments implement recommendation 1 of the Senate committee, which was that the use of the proposed new dead time provision relating to overseas inquiry be subject to approval by a judicial officer. As I mentioned earlier in my contribution to the second reading debate, Labor wrote to the government on 12 May seeking this amendment. We were pleased to learn this week that the government had agreed to it. It has now provided and moved the relevant amendments. Opposition amendments (1), (2), (3) and (4) on the revised running sheet deal with the same matter—perhaps in a slightly different way, but they come to the same conclusion. As we are supporting the government’s amendments, I will not be moving the opposition amendments I have just described.

Senator GREIG (Western Australia) (9.34 p.m.)—Government amendments (4) and (5) are both consequential upon amendment (6), which itself inserts a new provision requiring that extensions of the extension of the investigation period by the use of dead time must be approved by a magistrate or a justice of the peace. This amendment implements a recommendation of the legal and constitutional committee, which I was
pleased to be a part of, that suspensions of the investigation period should be approved by a judicial officer.

While the Democrats welcome these amendments and will be supporting them, we would like to record our outstanding concerns in relation to these provisions. In particular, we are concerned that it will be possible for a suspension of the investigation period to be authorised by a justice of the peace. Minister, might that include, for example, an employee of the Attorney-General’s Department who is a justice of the peace? Could they authorise such a suspension?

We find it disturbing that there is no maximum amount of dead time—in other words, although a person can only be questioned for a maximum period of 24 hours under the bill, they could potentially be kept in police custody indefinitely without being charged provided that a magistrate or a JP approves the suspension of the investigation period. We clearly do not believe that is a satisfactory situation. It is one of the reasons why we will ultimately be opposing this bill.

However, we do acknowledge that in this instance the government’s amendment (6) improves the bill. Thus we support it and amendments (4) and (5) which are consequent on it. Minister, I repeat my question: could an employee of the Attorney-General’s Department who is a JP be the person to authorise a suspension?

Senator ELLISON—Exactly! In this situation there is a provision for a magistrate or, if one is not available, a bail justice. I am provided with clause 23DA, which talks about specifying time during which suspension or delay of questioning may be disregarded. It states there:

The application must be made to:

(a) a magistrate; or

(b) if it cannot be made at a time when a magistrate is available—a justice of the peace employed in a court of a State or Territory or a bail justice; or

(c) if it cannot be made when any of the foregoing is available—any justice of the peace.

So you have a descending order. Bail justice is a term that applies to Victoria. Each of the states has its own bail act and, as mentioned earlier, there is a patchwork of provisions in relation to bail. The term bail justice applies to Victoria; justice of the peace is a more common term which is used in other states and territories. So you have a magistrate first and if you cannot find a magistrate it has to be either a justice of the peace employed in a court of a state or territory or a bail justice. Bail justice applies to Victoria; justice of the peace applies to the other jurisdictions.

Senator NETTLE (New South Wales) (9.39 p.m.)—I thank the minister for providing an answer to that question and Senator Greig for pointing out that part of the legislation, because it is quite an incredible piece of legislation. The Greens support these amendments in relation to when individuals get dead time—and that dead time occurs for a raft of different reasons—and stipulations as to how that dead time is to apply. But it is quite incredible that a justice of the peace—and, as Senator Greig rightly pointed out, the justice of the peace might be somebody employed by the Attorney-General’s Department—can grant a suspension of 23 hours or 10 hours whilst investigations are made and
that, after questioning continues, the same justice of the peace in the Attorney-General’s Department can grant another suspension of another 10 hours. Minister, is there any way in which this is not providing for indefinite detention?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.40 p.m.)—Firstly, additional dead time can only be accessed if judicial approval is given. That reflects the recommendation of the Senate Legal and Constitutional Legislation Committee. It is not automatically available to the police, and that should be remembered. The judicial officer can impose a maximum cap on the period of dead time authorised. As part of the authorisation process, the arrested person or the representative of that arrested person can make representations to the judicial officer.

Secondly, any suspension or delay of questioning to obtain further information or to make overseas inquiries must be reasonable. A suspension or delay would be unreasonable if relevant information could be obtained from an overseas location without delay or if the same information as that sought overseas could be obtained from a location within Australia. A suspension or delay may also be unreasonable if the information to be obtained has little relevance to the questioning of the suspect.

Thirdly, the period for which the questioning is suspended or delayed must also be reasonable. This period would be capped by the judicial officer, who must specify a specific period of dead time. So you have a number of safeguards in relation to the dead time and the suspension of questioning. The involvement of the judicial officer gives you that certainty. I have outlined provisions stating where it would be considered unreasonable to have an extension of time. If a police officer detained a person beyond the time which had been authorised then they would be subject to sanction because they would be clearly in breach of these provisions.

You should have caps on the time allotted. We have the current four hours for an adult and two hours for a child with the extensions provided by judicial approval. With these proposals, extra dead time has to be obtained by judicial approval and any suspension or delay of questioning for overseas inquiry must be reasonable. You cannot just do it on a whim or a fancy. You cannot just say, ‘I’ve got to phone up the United Kingdom for information and I want an extra 10 hours to do that.’ You have to give solid reasons as to why. I mentioned the time zones which are specified in the amendments. We believe that spells it out quite clearly that certainly you would not have indefinite detention. If there were any attempt to do that, it would be in breach of these provisions.

Senator BROWN (Tasmania) (9.44 p.m.)—I ask the minister: is any justice of the peace a judicial officer?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.44 p.m.)—The answer to that is yes.

Senator NETTLE (New South Wales) (9.44 p.m.)—I thank the minister for his previous answer in relation to indefinite detention in saying that he believed it would be outlawed under the provisions. Can the minister point to where? The question was: how does this not involve indefinite detention? The answer the minister gave was that he thought indefinite detention would not be covered under these provisions. Can the minister point to where?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.45 p.m.)—I point to government amendments (4) to (6), particularly (5), which states:

(m) any reasonable time that:
(i) is a time during which the questioning of the person is reasonably suspended or delayed; and

(ii) is within a period specified under section 23CB.

That is government amendment (5) relating to dead time. The application for judicial approval is provided for in government amendment (6). We have gone over the fact that the application must be made to a magistrate, a justice of the peace or a bail justice—

I am looking at subsection (3). It provides for the reasons, as I mentioned earlier, for the extra dead time, which are contained in subsection (5)(c)(i), (ii), (iii) and (iv), which I recited to the Senate previously. It is all set out in the government amendments, and I think that that adequately covers the query that Senator Nettle has raised.

Senator NETTLE (New South Wales) (9.47 p.m.)—I thank the minister for attempting to answer that question. If there is a belief that indefinite detention is reasonable, under the section the minister pointed out, amendment (5)—‘any reasonable time’—can there be indefinite detention?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.47 p.m.)—If it ended up in court I would be amazed if any court in Australia would be of a view that reasonable time was indefinite. I can say quite clearly that that is not the intention of this at all. Those remarks are important because they are being placed on the record during this debate for a very good reason—that is, it is not the government’s intention at all that a reasonable time would be equated to an indefinite period. I think that that answers the question very clearly.

What you have to remember is that the question of reasonable time has been addressed by the courts. It has been used in the law in all sorts of circumstances, because you cannot be too prescriptive about every situation. What you do rely on is a body of case law which says that ‘reasonable’ equates to the circumstances of the case, but it certainly does not equate to an indefinite period of time.

Progress reported.

ADJOURNMENT

The DEPUTY PRESIDENT—Order! It being 9.50 p.m., I propose the question:

That the Senate do now adjourn.

Queensland: Road Funding

Senator SANTORO (Queensland) (9.50 p.m.)—Tonight I want to say a few words about road funding as it applies to our state of Queensland, Mr Deputy President. This has been in the news quite a lot lately, because in Queensland the Beattie Labor government has been behaving very badly. For example, it has just brought down a budget that cuts state spending on road infrastructure to just 12 per cent of the capital works program. There was a miserly six per cent increase in new state funding for road projects. The Howard government, through the AusLink national transport plan, has increased federal road funding in Queensland by 61 per cent. The question must be asked: who is failing the test here?

There was one nasty statistic about Queensland under Labor that I highlighted in this place yesterday. It is that the Beattie government likes to play the blame game. It is forever seeking scapegoats for its own failings. As always when he is in a tight corner—and it is usually one he has put himself into—Premier Beattie blames the feds.

The chief focus of interest at present is the appalling condition of traffic on the Ipswich Motorway. This carries very heavy commuter traffic in the morning and afternoon peak hours and a lot of heavy transport traffic at all times. It is a national highway, but
its problems, which the Commonwealth has already paid out tens of millions of dollars to fix, flow to a very large extent from problems fed into the motorway from inadequate state transport infrastructure—roads and public transport. That is why my energetic Liberal colleagues in the other place—the member for Blair and the member for Moreton—have been so assiduous and so utterly determined in helping to find a solution. The member for Ryan, too, has flow-on traffic problems—if ‘flow-on’ is an appropriate term in the circumstances—as a consequence of the Ipswich Motorway’s current inability to cope with traffic volumes. He has also played a valuable part in finding a solution. It is also a project in which I have been happy to lend a hand.

Incidentally, I wish to acknowledge the presence in the public gallery of Ms Kathy Lynch, a recent policy vice president of the Liberal Party and someone who has done much work in developing good, sound transport policy, an activity clearly of assistance to the Liberal Party and the community. Today, in the vital area of road and transport infrastructure policy, Mr Peter Turner continues to perform in the grand and effective tradition of Ms Lynch, and I am also indebted to him for the good work that he does in that vital area of policy development.

When it comes to road infrastructure a holistic solution is necessary not only because there is a clear federal role in creating effective road infrastructure but also because someone has to fill in the gaps left after the Beattie government has spent its money on its primary capital works program—building a compliant bureaucracy. On the other hand, the response of the Howard government to Brisbane’s, and indeed south-east Queensland’s, transport difficulties has been exemplary. The commitment and foresight of the Minister for Transport and Regional Services, the Deputy Prime Minister, has been faultless and unfailing. So has that of the Minister for Roads and Local Government, my friend and colleague in this place Senator the Hon. Ian Campbell.

In particular, I want to pay tribute to Senator Campbell, whom the Beattie Labor government has rudely and crudely tried to demonise over the Ipswich Motorway. Perhaps Premier Beattie does not know—indeed I do not think that he would care at all—that Senator Campbell, while from the great state of Western Australia, was born and raised in Queensland and knows at first-hand what the actual development and infrastructure problems are. Mr Beattie may not be aware that Senator Campbell attended Brisbane Grammar and grew up on the Sunshine Coast, another area to which the Beattie government fails to give enough attention. The federal Minister for Roads and Local Government has made a forensic investigation of the Ipswich Motorway situation. His inquiries have been very detailed. They have been very specific. They have involved not only the local federal coalition members but, more importantly, the community. His analysis cannot be faulted, except by the curiously inverted logic that the Beattie Labor government likes to employ.

The Commonwealth’s funding proposal for the Ipswich Motorway, the solution that it has put forward, results from a deep understanding of the key issues involved and the requirements of the motorway’s users. It flows, too, from a good grasp of the prerequisites of the local population and those of surrounding and therefore affected areas. In short, the solution is one that requires the cooperation of all three levels of government and key stakeholders and adequate funding from the levels of government that are responsible for the road. It was sickening to see how the Beattie government played up to the Commonwealth while everyone—or so it was thought—was reading from the same
page in the search for a solution, but then behaved like an attack dog the moment the money was put on the table. Not only does it bite the hand that feeds it, it takes the arm off at the elbow. The Beattie government clearly has no conscience.

On the Ipswich Motorway, as in the case of the Tugun bypass at the southern end of the Gold Coast, it has been keen to point out the problems, which are in any case very plain, but very reluctant to do anything about them. The solution to the Ipswich Motorway’s problems is not to fund a six-lane development, as Opposition Leader Mark Latham said after the AusLink white paper was released. It is to spend substantial sums—to be precise, $52.7 million over five years—to begin upgrading and planning for future improvements to the motorway in the context of an overall integrated urban solution. It is a solution that has also been embraced not just by the local residents affected by the current condition of the Ipswich Motorway but also by the local businesspeople and developers who see the technical and financial sense of the initiative that has been worked out by the diligent coalition MPs, the minister and of course the local residents. That solution embraces the Pacific Highway, the Gateway Motorway and the bridge, and the Logan Motorway. That is a further $574 million that the Howard government will outlay as part of a total investment in Brisbane urban corridors that will total $626.7 million over five years.

As my friend and colleague the member for Moreton said in other place on 24 May, the Queensland government’s solution is to entrench forever the business case for more trucks—more traffic—in the area. Labor says—to quote the Minister for Citizenship and Multicultural Affairs speaking as the local member, I should stress, and a very good local member at that—it is okay for 18-wheel trucks to be competing for space on the Ipswich Motorway with mums and dads taking their kids to school. I want to compliment my friend and colleague from the lower house the honourable member for Moreton because the residents who live near roads such as Kessels Road, Oxley Road, Graceville Avenue, Venner Road and King Arthur Terrace, and residents who also live near other roads outside his electorate such as the Mount Gravatt-Capalaba Road, will benefit enormously from the long-term initiative that the member for Moreton has shown when it comes to improving road and transport infrastructure not only in his electorate but also in the surrounding area.

My friend the member for Blair in the other place is also a critic of the Labor recipe for further and worsening chaos on the Ipswich Motorway and surrounding road systems. As he pointed out in the House of Representatives only this week, the Beattie Labor government’s proposal—backed by the former profligate mayor of Liverpool, now the federal leader of the Labor Party—is for an eight-year time frame for construction of an even bigger parking lot. Queensland’s transport minister, Mr Paul Lucas, who should know the score, apparently does not. In the state legislature on 18 March this year he said the Ipswich Motorway ‘is reaching its capacity of some 99,000 cars per week-day’. Yet according to the Labor Party, on its own web site, the 2003 figure was already 99,073.

As the member for Blair pointed out—not happily perhaps, but maybe with some bitter humour at the contortions the ALP goes through in trying to justify the unjustifiable—the ‘Queensland solution’ is apparently based on discounting traffic flow by some 20 per cent. While I was doing a little research for this speech I looked at something the Labor member for Oxley said in the grievance debate in the House of Representatives on 8 March this year about the Ipswich
Motorway, in which you might think he has a vital interest as one of the local members—thankfully not the only local member because if that had been the case those people that he represents and those he seeks to represent would have been sold out very badly. He said it should be fixed as a stand-alone project, commenting:

Let us upgrade it to six lanes and do a proper job. Then let us talk about other roads. Or we can do it at the same time—it does not worry me: we can chew gum and walk and breathe at the same time.

That is what the member for Oxley said. I say to that: fine, but you also have to be able to think first. The member for Oxley did not think—on this as on so much else. Neither does the Labor Party or the Queensland government think not only on this issue but on so many other issues.

Trade: Free Trade Agreement

Senator LUNDY (Australian Capital Territory) (9.59 p.m.)—In the opening pages of Neal Stephenson’s ode to the future, Snow Crash, he describes the US economy as only doing four things well: music, movies, software and pizza delivery, this last one being a metaphor for distribution. Stephenson’s simplistic message is that, done well, only these four things are needed to stay on top of the global economic food chain. In other words, control over production and distribution of both cultural content and knowledge and the tools to manage it are the means to social, cultural and economic domination. It sounds melodramatic—of course, that is Stephenson’s style. His choice of metaphor is fascinating because it is so deeply rooted in the US marketcentric culture.

History suggests that cultural and economic performance are deeply intertwined. The dominant economic power in the world today is the US, whose culture has been carried by its economic reach to all parts of the globe. Is it a coincidence that the great emergent economic power in the world today is China, a nation which has a rich culture and the potential to establish as broad a reach and arguably already has? I do not think it is a coincidence. Nor do I think it is a coincidence that both of these countries have, during their economic development, been called the greatest thieves of intellectual property in the world. The US and, more recently, China have demonstrated an ability to take what they need from the rest of the world, assimilating strengths without selling out their core character. Once in the ascendancy, it is only to be expected that they would seek to pull up the drawbridge behind them.

So for a whole range of reasons Stephenson’s words came to mind. It is the control of music, movies, software and their distribution that is precisely the subject of chapters 17, 14 and others in the proposed so-called free trade agreement between Australia and the United States of America. It is what we stand to lose in relation to these issues that exposes the hidden truth that the Prime Minister, with his forelock-tugging approach to trade and foreign relations, is intellectually ill equipped to understand—because his mind remains rooted in a time and a class when we, for all intents and purposes, were colonial. Mr Howard does not understand that there might be things that are uniquely Australian that we stand to lose: our ability to create, innovate and use our intellectual property to advance social and economic goals.

The Howard government’s sycophantic participation in bilateral trade talks with America was inevitably going to lead to an imbalanced outcome. This is because America is really big and Australia is really small. It is also because America has an aggressive and comprehensive bilateral agenda that has at its core the growth of US-centric cultural content and US corporate friendly intellectual property management. Even the legis-
lated copyright extension is called the Mickey Mouse amendment, so complete is the corporate domination of the debate. In contrast, Australia had a domestic political issue relating to our continuing political and economic emphasis on primary produce. Culture, intellectual property and copyright were brought to the table by the US. One can only assume that the important issue of intellectual property did not rate at all in the Howard government’s political motivation to do the deal. In fact it seems that the Australian negotiators were led to believe that the US intellectual property agenda was wholeheartedly supported by at least some so-called Australian interests, including the Business Software Association of Australia, which of course were really representing the interests of very large US based companies operating here.

It seems that any further analysis of the fact that these interests were not necessarily Australia’s at all either did not occur or was conveniently ignored. Given the weight put on these issues by the US and the vigorous domestic debate in that country, alarms bells should have been ringing. Instead, the negotiated result shows lazy, irresponsible political expediency that has the potential to cost Australia dearly. The result is an agreement that seeks to determine a new direction in Australian IP law. It is an agreement that is dictating legislative change, despite the fact that a programmed review of the Australian digital agenda legislation has reached its own conclusion. To date the Howard Government have not bothered to defend this interference in the digital agenda review and its recommendations—a legislated review put in place at the time of the passage of this legislation through the parliament. This was scheduled three years after the law came into effect and is in direct conflict with its recommendations with the direction the free trade agreement will take Australian intellectual property law.

For software and applications, the free trade agreement effectively means that intellectual property law in Australia faces an ad hoc morphing to conform with US law. I say ad hoc because the changes are only where it is favourable to the common corporate interests in both countries—that is, those here in Australia with head offices of their organisations in the US. Some counterbalancing features under US law—such as the fair use of copyright—do not exist here, so claims that the free trade agreement will bring consistency or uniformity to Australian and US intellectual property law have little credibility.

Getting to the bottom of all this complexity is therefore necessary if we are to assess the overall merits of this proposal. Intuitively, these provisions represent bad news for Australia. This is why the Labor initiated Senate Select Committee on the Free Trade Agreement between Australia and the United States of America is so important. It is not controlled by the Howard government, so it does create a forum for transparent assessment. The people of Australia were never going to get that from the Howard government. Not only has Labor created a forum for the airing of the real and likely impact of the proposed free trade agreement, it has lifted awareness of intellectual property management and cultural independence generally.

With the political focus of the free trade agreement on agriculture, it has been a substantial challenge for the cultural sector, arts community and IT sector to respond with vigour and substance to the threats and challenges posed by the free trade agreement to cultural independence and innovation. But respond they have. Through the body of evidence already gathered by the Senate committee, through written submissions and public hearings, a picture is taking shape. This picture tells a story of how this agreement and the related changes to our laws will po-
tentially stifle what is unique and interesting about Australian culture through music, movies and software innovation.

Whether it is the importance of having the largest, on a per capita basis, dynamic open source software sector or the need to be able to express ourselves in our cultural content, the bulk of non-large corporate evidence argues that this free trade agreement will have an inhibiting effect. For the first time, parliament is gaining a clearer understanding of the impact that open source software is having in Australia and around the world. But as open source software gains market share and challenges the anticompetitive habits of existing large software houses, the free trade agreement will potentially put the brakes on this momentum. The Australian open source community argue that Australia will be particularly disadvantaged because we have a higher proportion of, and therefore a greater future potential for, open source as a part of a growing software sector.

In conclusion, there is no doubt about the degree of secrecy and trickiness the Howard government has employed to get this deal to this stage. What remains to be seen is just how much detail has been deliberately withheld from the Australian people. I will conclude with a reminder of the history and motivation of intellectual property law, which was to create an incentive for writers by giving them some control over their work. Patent laws were designed to prevent monopolies by making public important technological innovations, by providing inventors with temporary exclusive rights over their creation as a trade-off. The underlying assumption was that innovation best occurred with free-flowing ideas in the public domain. It is with some irony that such laws have departed so dramatically from their original intent.

Environment: Endangered Species

Senator CHERRY (Queensland) (10.08 p.m.)—I rise tonight to speak about the issue of development in the Sunshine Coast region of Queensland, in particular about the reluctance of the federal government to own up to its responsibilities and live up to its obligations under the federal Environment Protection and Biodiversity Conservation Act to protect matters of national environmental significance. This particular matter has arisen because of a proposal by a development firm to build a supermarket in a shopping centre in the middle of the main street of Maleny. Ordinarily you would not think that building a supermarket in a shopping centre in the middle of a small country town would ultimately trigger a federal environment protection act, but what was fascinating about this particular development was that it actually affected an area of land known to be used by at least two significant endangered species registered under the federal act. In particular, it was known that the Coxen’s Fig Parrot actually roosted on this particular block of land. It was also known that the creek on which this particular shopping centre was to be built was an important part of the recovery program for the endangered Mary River Cod. It was also known that platypuses were actually breeding in this creek in the middle of this very small country town. All of these things were known to the government because they were clear in the referral that was given to the government by the developers, yet in record time the government dismissed the question of whether this development was going to have a significant impact on endangered and threatened species.

In doing so, in my view, the government has again failed to live up to its obligations under the EPBC Act to protect matters of national environmental importance. What is particularly worrying for me is that the government has also undermined programs
which it has itself been funding. In the last five years the federal government, through the Natural Heritage Trust, has put $383,000 into breeding programs to help the Mary River Cod recover in the Mary River catchment, which includes Obi Obi Creek, which flows through Maleny. It was known that fingerlings that had been bred as part of that recovery program had been released into this creek in the vicinity of this shopping centre development and it was known that this development would obviously have a significant impact on the effectiveness of that recovery program, yet at no point did the minister bother to check with the scientists involved in that recovery program to discuss the impact on that threatened endangered species. In particular, at no point did the minister even consult with the scientists involved in the Coxen’s Fig Parrot recovery plan, also being funded out of federal money in the same area. It was known that the Coxen’s Fig Parrot was actually roosting in one of the large fig trees on the block of land but at no stage did the minister or his department bother to contact the scientists involved in the recovery plan to check on the impact of this development on that particular plan. In answers which the minister has provided to questions on notice from my colleague Senator Allison, he did acknowledge that they at least read the recovery plan. I think the good burghers of Maleny should be thankful that the minister at least read the recovery plan, but it is extremely disappointing that he did not bother to go further and actually talk with the scientists involved in the recovery plan to work out what the impact would be on the Coxen’s Fig Parrot if this particular piece of land were developed.

Ordinarily it would probably not be a matter which you would worry about in terms of a block of land in the middle of a small country town triggering the EPBC Act. But in this particular circumstance two threatened species which are protected by that federal act were impacted on by that particular development and the minister, in my view, has comprehensively failed to take proper account of that. Indeed, looking at the answer which he gave to Senator Allison, it appears to me that the department went little further than desktop research, a quick perusal, of the papers submitted by the developer before giving it the big tick and flick and deciding it would not be a controlled action under the act. I believe that in doing so the minister completely failed to apply the precautionary principle which he is required to do under the EPBC Act. He certainly failed to ensure that the impact of this development on these two threatened species would in fact be properly assessed.

Indeed, in his response to Senator Allison’s question about why those involved in the Commonwealth funded recovery plan for the Mary River Cod which had been released into Obi Obi Creek had not been consulted by Environment Australia ‘in relation to the possible damage to creek banks associated with the development’, all he had to say was: Relevant information concerning the likely presence of the Mary River Cod and the impacts of the proposal on water quality ... within Obi Obi Creek was taken into account.

He did not say how, he did not say where, he did not say what information and he did not talk to the experts. He did not ensure that people actually went in and had a look at the site and tried to determine where the impact would be. Presumably he was not even aware that fingerlings under a federally funded recovery program were put into this creek. From the Democrats’ point of view, it is extremely disappointing to see the government yet again failing to live up to its obligations under that federal act.
The EPBC Act has been found by the Federal Court, in the Nathan Dam decision very recently, to be much more powerful and much more significant than the minister has been prepared to give it credit for. The Federal Court found that the minister is required to consider downstream and flow-on consequences of actions in determining environmental impact. I note that the minister has appealed that decision to the full Federal Court, but I have a sneaking suspicion he is not going to get much assistance from the full bench because it was a very strong decision and what the decision actually reflected was the precautionary principle which the minister has not been prepared to put in place in dealing with the act up to this particular stage.

It seems crazy to me that the government can be putting $383,000 of federal money into a recovery program for the endangered Mary River Cod, another $300,000 into rehabilitation of the Mary River catchment, another $30,000 into the recovery program for the Coxen’s Fig Parrot and another $30,000 into Project Platypus in the Blackall Range to try to improve habitats for these animals, yet at the same time approving in another part of the environment department a significant development that will adversely affect the effectiveness of all those funding programs. It would seem that one part of the environment department does not know what the other part is doing, or does not want to find out.

It is a very disappointing outcome from the minister’s point of view. It is very disappointing that the minister has been so cavalier with his responsibilities under this act and it is very disappointing that, as a result of not declaring this to be a controlled action, the important habitat that was on that site, including the fig tree that was known to be a feeding site for the Coxen’s Fig Parrot, has now been destroyed. It highlights the difficulty that local communities have in trying to get this government to live up to its national responsibilities to the environment in terms of these sorts of developments. It is unfortunate that it has reached the situation now where it will require the Caloundra City Council to find upwards of $1.8 million to buy the site if we are going to ensure that no further damage is done to what little vegetation is remaining. I will certainly be calling on the government to at least come good and help the Caloundra City Council to find the funds to buy the site so we can in fact get some revegetation going and ensure that the impacts on Obi Obi Creek and the animals that use that corridor as part of their ecosystem are not made worse by this development being taken further.

**Marriage**

Senator Barnett (Tasmania) (10.16 p.m.)—I stand in this place in support of the Howard government’s Marriage Legislation Amendment Bill 2004. Marriage is a bedrock institution worthy of protection. Marriage has endured for thousands of years and across countries, cultures and religions. It is a social institution which benefits family members and society. It provides for stability in society. It provides a solidly built roof under which children are nurtured, protected and raised. It specifically benefits the children and is designed to ensure their welfare is maximised. There should be no doubt about its definition. However, the commonly accepted definition of marriage—the union of a man and a woman—is under threat. If our current workable definition is watered down, the great value of the institution of marriage to our culture, to our society and particularly to our children will be irreversibly diminished. This is why the Howard government has introduced into the Australian parliament legislation to codify the current common law definition of marriage.
This legislation was passed in the House of Representatives today, and I commend Prime Minister John Howard and Attorney-General Philip Ruddock on this action.

Senator Cherry—Mr President, I rise on a point of order. Is this bill still on the Notice Paper at this stage?

The President—I understand that the senator can talk generally to the subject.

Senator Barnett—That is indeed what I am doing. I appreciate and accept the points made. Amazingly, there is no definition of marriage in the Marriage Act 1961, the Family Law Act 1975 or our Constitution. However, both pieces of legislation contain references to the traditional definition. For example, under section 46 of the Marriage Act civil celebrants are required to explain the nature of the marriage relationship before solemnising a marriage with words that include, 'Marriage, according to law in Australia, is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.' The issue of the meaning of marriage has been raised in Australia recently in a number of ways, including in the Family Court case of Kevin and Jennifer. The full Family Court said that the words ‘marriage’ and ‘man’ in the Marriage Act have a contemporary, everyday meaning. Are we going to allow the longstanding definition of marriage to be interpreted out of the context in which it was written?

With regard to Kevin and Jennifer, the former Chief Justice of the Family Court, the Hon. Justice Alistair Nicholson, had this to say in Australian Family Lawyer, Spring 2003:

The increasing legal recognition given to non-marital heterosexual unions from the 1980s on has more recently been extended to same sex unions, although in both cases there have been pockets of opposition to the extension of the various rights and obligations of marriage partners to less traditional couples. However, this may be, there are many couples who still seek marriage and in my view it behoves the law to develop in a way that gives marriage a modern contemporary meaning.

These comments and the recent trends are worrying. I acknowledge the current debate regarding a homosexual couple’s desire to access superannuation or property, and in many respects this is legitimate. This is why our government, in separate legislation, is acting to ensure those people in an interdependent relationship are protected when it comes to superannuation. However, claims to superannuation or the like are different from any claims to the right to be married.

Another issue that we are currently debating and considering is whether we are going to allow same-sex couples to adopt children from overseas. A study of Australian primary school children carried out by Dr Sotirios Sarantakos, Associate Professor of Sociology at Charles Sturt University, published in 1996, looked at children with married heterosexual parents, unmarried cohabiting heterosexual parents and homosexual parents. The study rated a variety of school subjects and assessed various social issues with each child. The study concludes with these words: Married couples seem to offer the best environment for a child’s social and educational development.

People have been voicing their opposition to same-sex marriage and adoption for a number of years. In the UK, the Rt Hon. Jack Straw MP was quoted on the Today program on 4 November 1998 as saying:

I’m not in favour of gay couples seeking to adopt children because I question whether that is the right start in life. We should not see children as trophies. Children, in my judgement, and I think it’s the judgement of almost everyone including single parents, are best brought up where you have two natural parents in a stable relationship. There’s no question about that. What we know from the evidence is that, generally speaking, that
stability is more likely to occur where the parents are married than when they are not.

More recently, Bill Muehlenberg of the Australian Family Association said in March this year in a lengthy article:

Marriage makes for better families and better families make for better societies. And from the evidence we just examined, marriage makes for better people as well.

The Labor Party has stated that it supports the right of homosexual couples to adopt children from overseas. This is illogical, irrational and sends all the wrong messages. Remember, the purpose of adoption is to give parents to children, not children to parents. Same-sex adoption is against the best interests of the child.

On matters close to home, I notice the Labor member for the seat of Bass, Michelle O’Byrne, and the Liberal candidate, Michael Ferguson, have two diametrically opposed views on this legislation and, indeed, on what constitutes both marriage and the family. Michelle O’Byrne’s position was reported widely in the national media when the legislation was just announced. The reports made it clear she was uncomfortable with Labor’s position in supporting the definition of marriage as between a man and a woman. The Australian reported on the 2 June 2004:

Labor MP Michelle O’Byrne compared the push to restrict same-sex couples’ ability to adopt with apartheid, telling caucus that during the 1980s she would have committed a crime in South Africa if she had stayed in the same room as her husband.

To add to this view, which I do not believe is supported in the community in Tasmania, Michelle O’Byrne is reported as saying in the parliament on 1 April 2004:

The Howard government has long tried to claim some kind of moralistic ground when it comes to family but, as we heard today from the Prime Minister himself, this government’s commitment to families only serves you if you fit into its narrow view of what a family might be: mum, dad—who has to be the husband, from what the Prime Minister said—a couple of kids and a white picket fence. Most people do not actually fit into this mould.

She also said:

The definition of a family today is actually much more broad. They are not always biologically based. There are foster families, single parent families, families comprising of same sex couples, blended families and many more types. You cannot actually have a nice simplistic idea of a family.

She went on to say:

Surely, a family is a group of people who create a set of relationships to ensure their own and their loved one’s daily needs are met. It is a symbiotic relationship between a community and a family ...

And she goes on. Exactly what is she talking about? How confusing is that? I would ask Michelle O’Byrne to come clean and tell her community exactly what she thinks. Does she support homosexual marriages or is she hiding behind Labor’s new policy, just like Peter Garrett, and recanting on her own beliefs?

At least three Australian same-sex couples are trying to change the current law in Australia by travelling to an overseas jurisdiction such as Canada, Netherlands, Belgium or Denmark to be married and then returning home to seek judicial recognition of their marriage in Australia. A notice of intent to do just this was made in February this year. Australia is a party to the Hague Convention on Celebration and Recognition of the Validity of Marriages. One of the obligations placed on Australia is to recognise marriages validly entered into in foreign countries. It is immaterial whether the foreign country is a party to the convention. The Hague convention does not define ‘marriage’. However, it has been recommended that marriage ‘shall be taken to refer to the institution of marriage in its broadest, international sense’. Some unions are explicitly excluded from
the convention. However, same-sex marriages are not excluded and neither are polygamous marriages.

It is arguable that either now or at some time in the future, if it is not for the Howard government legislation, the Hague convention will enable foreign same-sex marriages to be recognised in Australia. The great weakness for Australia is that current arrangements mean that the local, currently accepted definition of marriage is vulnerable to redefinition on the basis of what unions other countries choose to recognise as ‘marriage’. Wherever possible Australian law should be made in Australia by Australians for Australians and that law should prevail.

Although no state in the USA officially recognises gay marriages, civil unions between same-sex couples are currently legal in Vermont. In Massachusetts, the state’s Supreme Judicial Court essentially legalised gay marriage in November 2003, by ruling that the state constitution requires recognition of gay marriages. Recently, some city mayors and local authorities in San Francisco, New York and New Mexico have defied their state laws and issued marriage licences to same-sex couples. Governors in these states have declared such marriages invalid under existing state law and sought injunctions to prevent further licences being issued. Some Canadian provinces, US states and European countries enable unions between same-sex partners to be registered, without according them the same status as marriage. President George Bush has recently announced his intention to ban same-sex marriages. The Prime Minister has recently said:

I think there are certain benchmark institutions and arrangements in our society that you don’t muck around with, and children should be brought up ideally by a mother and a father who are married. That’s the ideal. I mean I’m not saying people who are unmarried are incapable of being loving parents. Of course they are. I mean I believe in the maximum conditions of stability for people who have children.

The PRESIDENT—Order! The time for your contribution has expired.

Senator BARNETT—Mr President, I seek leave to incorporate the remainder of my speech in *Hansard*.

Leave not granted.

Senator BARNETT—Mr President, I seek leave to continue for one more minute in light of the earlier interjection.

Leave granted.

Senator BARNETT—Thank you, Mr President, and I appreciate the indulgence. To remove the growing doubt about the future of marriage as a fundamental institution in society and avoid any threat to its definition, I researched and drafted a letter to the Prime Minister recommending an amendment to the Marriage Act. It was signed by 30 of my coalition backbench colleagues. That amendment has now been introduced—and I support it, obviously. Marriage is a rock-solid institution. It is not a fashion to be updated, and I hope the legislation is passed.

Finally, I wish to sincerely thank the many hundreds of Australians from all around this country, and especially from Tasmania, for the support, encouragement and prayer of the past few months. I have been inundated with letters, emails and calls and have been heartened greatly. I have also been maligned and abused by some of those with a different view. But that is the nature of the democratic world we live in, and I thank God for the privilege we have in this country to stand up and say what we believe without fear or favour.

Senate adjourned at 10.29 p.m.
The following documents were tabled by the Clerk:

Lands Acquisition Act—Statements describing property acquired by agreement under sections 40 and 125 of the Act for specified public purposes [2].

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Commonwealth Scientific and Industrial Research Organisation: Appointment
(Question Nos 2871 and 2872)

Senator Brown asked the Minister representing the Minister for Science the following questions, upon notice, on 11 May 2004:

With reference to the appointment of Ms Donna Staunton as Communication Director for the Commonwealth Scientific and Industrial Research Organisation (CSIRO):

(1) When was the Minister advised of the appointment.
(2) Did the Minister have any role in making or approving the appointment.
(3) Given Ms Staunton’s lack of scientific experience and her previous roles with the tobacco industry, what is the Minister’s view concerning the appropriateness of Ms Staunton’s appointment.
(4) Has Ms Staunton retracted her well-known public position for example, as reported in The Age on 25 April 2004, that smoking is not addictive.
(5) Does the Minister consider it appropriate that CSIRO has not declared Ms Staunton’s long, well-known, documented and public defence of smoking as not being addictive.
(6) What conflicts of interest could arise between Ms Staunton’s support of the tobacco industry and CSIRO work on preventive health, particularly the Preventative Health Flagship program.

Senator Vanstone—The Minister for Science has provided the following answer to the honourable senator’s question:

(1) As a matter of courtesy I was advised of the impending appointment of Ms Staunton before it was announced to CSIRO’s senior executive staff on 2 March 2004.

(2) As is routinely the case with senior CSIRO appointments, a range of internal and external stakeholder views are sought prior to deciding on an appointment. My views (along with those of a number of other stakeholders) were sought in relation to this position. The final decision was an internal matter for CSIRO management.

(3) CSIRO is a large and complex organisation which operates in a competitive and challenging environment. It is essential that it recruits highly talented and experienced people in its research support areas. Ms Staunton is a highly regarded communication professional with strategic communication experience in complex organisations and with strong networks across all levels of government and industry.

(4) Yes. In 2000, Ms Staunton stated that she accepted that nicotine is in fact addictive and that smoking is a major cause of preventable illness in Australian society.

(5) Prior to the appointment of Ms Staunton to this position, CSIRO considered all relevant matters relating to the appointment and concluded that she was an outstanding candidate with extensive experience in the communication area at a high level and with strong networks across all levels of government and industry. Statements Ms Staunton made approximately 10 years ago concerning the addiciveness of nicotine were retracted in 2000.

(6) See (5) above. Ms Staunton’s employment in the tobacco industry ceased in 1999. Since 1999 Ms Staunton has been a Member of the Board of Directors of the National Breast Cancer Centre. There are no real or perceived conflicts of interest.
Copyright: Piracy
(Question No. 2875)

Senator Ludwig asked the Minister for Justice and Customs, upon notice, on 6 May 2004:

(1) (a) How many operations against copyright infringement or piracy were initiated in the 2002-03 financial year; and (b)(i) can this figure be provided broken down by state and territory, (ii) how many operations resulted in charges being laid against individuals or corporations, and (iii) how many operations were a result of: (a) liaison with international policing groups, and (b) complaints by members of public against an operator or retailer.

(2) For the 2002-03 financial year, how many offences against the Copyright Act 1968 in relation to piracy have resulted in: (a) a conviction; (b) a maximum penalty fine of $65,000 being imposed; and/or (c) imprisonment.

(3) Can information be provided on cases where prosecutions in relation to these crimes have led to conviction, financial penalties and/or imprisonment.

(4) In cases where piracy was found to have occurred, what happened to the copying devices used to reproduce movies or sound recordings.

(5) In each conviction relating to the piracy of movies or sound recordings, did the Director of Public Prosecutions make a submission on behalf of the Government during the trial or sentencing phase requesting the court to take into consideration the quantity and value of the items seized; if so, what was the court’s comment or finding in each case in relation to this submission.

Senator Ellison—The answer to the honourable senator’s question is as follows:

(1) (a) In the 2003-03 financial year, 7 such cases were reported to the AFP.
(b) (i) Northern Territory, 1
   Victoria, 1
   New South Wales, 2
   South Australia, 1
   Tasmania, 1
   Christmas Island, 1
(ii) One case (from NSW) resulted in the prosecution of 3 individuals for the offence of ‘Distribute for the Purpose of Trade, contrary to the Copyright Act 1968. The remaining referrals were rejected by the AFP.
(iii) (a) Nil. (b) 7.

(2) (a) According to the Director of Public Prosecution (DPP) records, there have been five prosecutions conducted by the DPP pursuant to section 132 of the Copyright Act 1968 resulting in conviction in the 2002-03 financial year. Offences against the Copyright Act 1968 may also be prosecuted by State and Territory police. (b) In none of these prosecutions was a maximum penalty against the individual of $65,000 imposed. (c) In none of these prosecutions was a sentence of imprisonment imposed.

(3) The DPP holds records in relation to the sentences imposed in those cases that have led to conviction, financial penalties or imprisonment.

(4) Section 133(4) of the Copyright Act 1968 provides that the court may order that a device or recording equipment used or intended to be used for making infringing copies be destroyed or delivered up to the owner of the copyright concerned or otherwise dealt with in such manner as the court thinks fit. Of the cases in (2) above, in two cases orders were made pursuant to section 133(4) for the recording equipment to be forfeited to the Commonwealth. In one case the computer was destroyed.
equipment used in the commission of the offence was dealt with under Proceeds of Crime legislation. The remaining two cases did not involve copying devices.

(5) These matters are relevant to the sentence imposed and would generally be taken into consideration on sentence. The DPP does not hold records to answer this question.

Australian Volunteers International: Funding
(Question No. 2883 amended)

Senator Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 6 May 2004:

(1) In relation to the Government’s new policy on international volunteering, which takes a whole-of-government value for money approach, is it correct that under the new policy, $1.6 million will be withheld from Australian Volunteers International.

(2) Will these funds be spent on any other aspect of overseas aid and/or international volunteers.

Senator Hill—The Minister for Foreign Affairs has provided the following answer to the honourable senator’s question:

(1) Australian Volunteers International (AVI) is allocated funds from the Government on an annual basis. No funds have been “withheld”.

In 2003-2004 AVI was allocated $10 million. This represents a reduction of $1.6 million from funding provided in 2002-2003 and reflects a critical audit and financial systems assessment of AVI and the outcomes of an accreditation review of volunteer sending organisations.

AVI has received a total of $32.74 million between 2001-2002 and 2003-2004 under the Government’s volunteer program.

(2) See above. No funds have been withheld from AVI.